

Solid Waste  
&  
Resource Management Services

**Final**

FRANCHISE AGREEMENT  
BETWEEN

CITY OF DEL MAR

AND

Coast Waste Management, Inc.

FOR  
SOLID WASTE  
&  
RESOURCE MANAGEMENT SERVICES

Effective Date

April 1, 2012

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COAST WASTE MANAGEMENT  
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## RECITALS

This Franchise Agreement (Agreement) is entered into this \_\_\_ day of , 2012, by and between the City of Del Mar (City) and Coast Waste Management, Inc. (Company).

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.) has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions to meet the goals and requirements of AB 939; and

WHEREAS, the City is required pursuant to the AB 939 and SB 1016 to meet minimum diversion goals; and

WHEREAS, the City seeks to contract with a solid waste hauler to work together to exceed AB 939 goals by implementing sustainable programs and practices to reduce landfill tonnage, increase producer responsibility, reuse, repair and recycling, and educate the community to sustain the City's natural beauty and ocean safety; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an exclusive Franchise be awarded to a qualified company for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste and other services to meet the goals and requirements of AB 939; and

WHEREAS, in response to a Request for Proposals, Company has submitted a proposal to City and City selected Company on the competitive advantages of that proposal over other proposals received by City; and

WHEREAS, the Company agrees to and acknowledges that it shall properly dispose of all Solid Waste Collected in the City pursuant to this Agreement; and

WHEREAS, the City and the Company (Parties) hereto desire to enter into this Agreement

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

## ARTICLE 1

### DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Chapter 11.20 of the Del Mar City Code or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

**1.1 AB 939**

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

**1.2 Abandoned Items**

"Abandoned Items" means items abandoned in the public right-of-way, including but not limited to Bulky Waste items and Yard Waste, to be Collected by Company pursuant to Section 3.6.3.

**1.3 Affiliate**

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to the Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in the Company and/or a business that is also owned, controlled or managed by any business or individual that has a direct or indirect ownership interest in the Company. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a) (5) (C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

#### **1.4 Agreement**

"Agreement" means this Franchise Agreement between the City and the Company for the Collection, transportation, Recycling, processing and Disposal of Solid Waste, and other services related to meeting the goals and requirements of AB 939, including all exhibits and attachments, and any amendments thereto.

#### **1.5 Alternative Fuel Vehicle**

"Alternative Fuel Vehicle" means a vehicle whose engine uses fuel other than gasoline or diesel fuel, such as compressed natural gas or other fuel with comparably low emissions of air pollutants regulated under the Federal Clean Air Act, 42 U.S.C. Section 7401 *et seq.* or the California Clean Air Act, Health and Safety Code Section 39000 *et seq.*

#### **1.6 Bagster® service**

"Bagster® Service" means a method for Customers to arrange for collection of solid waste as an alternative to Temporary Service, using a Bagster® Bag. Company will provide for collection/processing of the Bagster® Bag.

#### **1.7 Billings**

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the Company, to Persons responsible for arranging for Solid Waste removal.

#### **1.8 Bin**

"Bin" means a metal Container with hinged lids and wheels serviced by a front-end loading truck with a capacity of 2 to 6 cubic yards, including Bins with compactors attached to increase the capacity of the Bin.

#### **1.9 Bulky Waste**

"Bulky Waste" means discarded furniture (including chairs, sofas, mattresses, and area rugs, but not carpeting); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); Electronic Waste (including stereos, televisions, computers, VCRs and other similar items commonly known as "brown goods", see Section 1.25); Residential wastes (including wood waste, tree trunks and large branches if no longer than two (2) feet in diameter, four (4) feet in length and fifty (50) lbs. in weight per bundle, scrap wood, in the aggregate not exceeding one cubic yard per Collection); clothing; and tires. Bulky Waste items do not include such things as car bodies or Construction and Demolition Waste, or any other items that cannot be handled by two persons.

**1.10 CalRecycle**

"CalRecycle" means the State of California's Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board or CIWMB.

**1.11 Can**

"Can" means a Solid Waste receptacle provided by Commercial or Residential Customers, approximately 30- to-35-gallons, serviced by manual Collection.

**1.12 Cart**

"Cart" means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated truck with a capacity of no less than 30 and no greater than 101-gallons.

**1.13 City**

"City" means the City of Del Mar, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the term of this Agreement.

**1.14 Collect/Collection**

"Collect" or "Collection" means to take physical possession, transport, and remove Solid Waste from Customers within the City.

**1.15 Commercial Premises**

"Commercial Premises" means all hotels, restaurants, offices, office buildings, stores, warehouses and all other premises used for other than dwelling purposes.

**1.16 Commingled Recyclables**

"Commingled Recyclables" means Recyclable Materials collected in a dual-stream system, single-stream system, or other collection method whereby materials are not considered Source Separated.

**1.17 Compactor**

"Compactor" means a Bin or Rolloff Box equipped with a mechanical apparatus that serves to compact the content of the container, regardless of size, whether stationary or mobile.

**1.18 Company**

"Company" means Coast Waste Management, Inc., the corporation and its officers, directors, employees, agents, companies and subcontractors.

**1.19 Company Compensation**

"Company Compensation" means the revenue received by the Company from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

**1.20 Complaint**

"Complaint" means a communication received by Company from a Customer or City indicating services have not been performed in accordance with this Agreement, or otherwise expressing dissatisfaction with service.

**1.21 Composting**

"Composting" means the separation of organic matter from the waste stream for controlled decomposition into a material that may be used as a soil amendment, such as through the use of composting bins provided under Section 3.3.5.

**1.22 Construction and Demolition (C&D) Debris**

"Construction and Demolition (C&D) Debris" means waste building materials, packaging and rubble resulting from construction, remodeling, repair or demolition operations on pavements, houses, commercial and industrial buildings, and other structures and improvements.

**1.23 Construction and Demolition (C&D) Debris Diversion Rate**

Contractor is required to divert 75 percent or more of C&D Debris Collected by it from Customers as long as material does not exceed minimum contamination levels.

**1.24 Containers**

"Containers" means any and all types of Refuse, Recyclable Material and Yard Waste receptacles, including Carts, Compactors, Bins, Cans and Roll off Boxes.

**1.25 Contamination Fee**

"Contamination Fee" shall mean an amount charged by Company to recover its costs for separating Refuse placed in Recyclable Materials or Green Waste Containers, for arranging special, unscheduled Collections, or for other unscheduled or extra services, due to contamination of Refuse, Recyclable Materials or Green Waste placed in Containers.

**1.26 CPI**

Eighty (80) percent of the Consumer Price Index (CPI) for the previous 12-month period (December through November) for All Urban Consumers in the Los Angeles, Riverside, Anaheim area, not seasonally adjusted will be applied to the base rate of Exhibit 4.

**1.27 Customer**

"Customer" means the owner, occupant or user of any Premises in the City receiving Solid Waste Collection service from the Company.

**1.28 Diversion**

"Diversion" means any combination of recycling and composting activities conducted that reduces waste disposed of at a landfill.

**1.29 Disposal**

"Disposal" means the ultimate disposition of Solid Waste Collected by the Company at a landfill in full regulatory compliance.

**1.30 Disposal Site(s)**

"Disposal Site(s)" mean the Solid Waste handling Facility or Facilities utilized for the ultimate Disposal of Solid Waste Collected by the Company.

**1.31 Electronic Waste or E-Waste**

"Electronic Waste" or "E-Waste" means discarded electronic equipment and includes, but is not limited to, stereos, televisions, CRTs, computers and computer monitors, VCRs, cellular phones, fax machines, household copiers, computer printers, other items with electric plugs that are banned from landfilling, and other similar items commonly known as "brown goods."

**1.32 Environmental Laws**

"Environmental Laws" means all federal and State statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

**1.33 Facility**

"Facility" means any plant or site, owned or leased and maintained, operated or used by the Company for purposes of performing under this Agreement.

**1.34 Franchise**

"Franchise" means the exclusive right granted by the City to provide Solid Waste services within the City, as described herein.



### **1.35 Franchise Fee**

"Franchise Fee" means a fee that helps fund the administration of the Franchise Agreement, implementation of solid waste programs required by law, mitigation of infrastructure use and impacts, the protection of public health and safety, and any other costs incurred by the City in accordance with law.

### **1.36 Food Waste**

"Food Waste" means Solid Waste that may be collected as part of Food Waste collection programs included in Sections 3.2.7 and 3.2.8, which includes:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper (including napkins, paper towels, paper plates); and
- Tea bags, coffee grounds and filters.

### **1.37 Green Waste**

"Green Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (including holiday trees, but otherwise not more than four (4) inches in diameter or four (4) feet in length) and similar materials generated at the Premises. Green Waste has the same meaning as Yard Waste for the purpose of this Agreement.

### **1.38 Gross Revenue**

"Gross Revenue" means the gross receipts obtained by the Contractor from fees collected from Customers for Solid Waste Collection services provided by the Contractor in the City of Del Mar under this Agreement.

### **1.39 Hazardous Substance**

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; or (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

**1.40 Hazardous Waste**

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

**1.41 Household Hazardous Waste (HHW)**

"Household Hazardous Waste" means Hazardous Waste generated at Residential Premises. Typical HHW includes used motor oil and oil filters, antifreeze and other vehicle fluids, paints and varnishes, pesticides, and cleaning supplies.

**1.42 Including**

"Including" means including but not limited to.

**1.43 Materials Recovery Facility**

"Materials Recovery Facility" means a Facility licensed or permitted in accordance with AB 939 which separates secondary materials, such as paper and other fibers, plastic, mixed glass and metal containers and processes them for sale to end users or use by Company.

**1.44 Mixed Waste Processing**

"Mixed Waste Processing" means the separation and sorting of Recyclable Materials and other recoverable materials from Refuse at a MRF where commingled loads of Solid Waste are processed.

**1.45 Multi-Family**

"Multi-Family" means pertaining to any Residential Premises with two or more units, irrespective of whether residence therein is transient, temporary or permanent.

**1.46 Non-City Sponsored Events**

"Non-City Sponsored Events" means periodic events (one-time, annual or occasional, but not year-round) not covered by Section 3.6.5.

**1.47 Owner**

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the Person holding legal title to the Disposal Site, depending upon the context used in this Agreement.

**1.48 Permanent Rolloff Box Service**

"Permanent Rolloff Box Service" means the Collection of Solid Waste generated from on-going operations at a Customer's place of business using Rolloff Boxes or large Compactors. This includes, for example, the Collection of Solid Waste from a Commercial Premises that would otherwise be collected using Bin service if the volume of Solid Waste generated were less. This does not include Rolloff Box service used for occasional higher volumes of waste due to special clean-up or other projects, or on construction or demolition sites.

**1.49 Person**

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of San Diego, town, city, or special purpose district.

**1.50 Premises**

"Premises" means any land, or building in the City where Solid Waste is generated or accumulated.

**1.51 Putrescible Waste**

"Putrescible Waste" means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions.

**1.52 Rate Year**

"Rate Year" means the twelve-month period from July 1st to June 30th, each year of the Agreement.

**1.53 Recycling**

"Recycling" means any process by which materials which would otherwise be disposed of are Collected (source-separated, co-mingled, or as mixed waste), separated and/or processed and returned to the economic mainstream in the form of raw materials or products or materials which are otherwise salvaged or recovered for reuse or other beneficial purposes.

**1.54 Recyclable Materials**

"Recyclable Materials" means those materials that are capable of Recycling. Recyclable Materials include: newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, kraft brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; small scrap and cast aluminum (not exceeding ten (10) pounds in weight nor two (2) feet in any dimension for any single item); steel including "tin" cans and small scrap (not exceeding ten (10) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; mixed plastics including, but not limited to, plastic containers (1-7), and bottles including containers

made of HDPE, LDPE, PET, or PVC; and aseptic containers and polystyrene (except polystyrene peanuts). Polystyrene peanuts and film plastic, including plastic bags are specifically excluded from collection and processing.

**1.55 Refuse**

"Refuse" means Solid Waste which, for the purpose of Disposal, have been placed in or next to a Container for Collection.

**1.56 Residential**

"Residential" refers to property, or Owners of property, which is used for residential purposes including Single-Family and Multi-Family dwelling units, irrespective of whether such dwelling units are rental units or are Owner-occupied.

**1.57 Rolloff Box**

"Rolloff Box" means an open-top metal Container or closed compactor boxes serviced by a rolloff truck with a capacity of 10 to 50 cubic yards.

**1.58 Single-Family**

"Single-Family" means pertaining to any Residential Premises with only one dwelling unit.

**1.59 Solid Waste**

"Solid Waste" means all Putrescible and non-Putrescible solid, semisolid, and liquid wastes, including garbage, food waste, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, and as otherwise defined in Public Resources Code §40191, recyclable materials and yard waste.

**1.60 State**

"State" means the State of California.

**1.61 Temporary Service**

"Temporary Service" means Solid Waste Collection services provided on a project basis, such as Construction and Demolition projects and occasional clean-up projects using a Rolloff Box or Bin. Regular Collection of Solid Waste generated by a Commercial Premises' ongoing operations is not included.

**1.62 Transformation**

"Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting.

### **1.63 Universal Waste**

"Universal Waste" means any of the following waste that are conditionally exempt from classification as hazardous wastes pursuant to Title 22 of the California Code of Regulations (22 CCR), section 66261.9: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as described in 22 ccr section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR section 66273.6.

### **1.64 Yard Waste**

"Yard Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (including holiday trees, but otherwise not more than four (4) inches in diameter or four (4) feet in length) and similar materials generated at the Premises. Yard Waste has the same meaning as Green Waste for the purpose of this Agreement.

### **1.65 Zero Waste**

"Zero Waste" means a focus on reducing landfill tonnage by reducing consumption, minimizing waste, maximizing reuse, repair, and Recycling, ensuring products are made to be reused, repaired or Recycled back into nature or the marketplace. A 90% diversion rate is readily accepted as achieving 'Zero Waste.'

## **ARTICLE 2**

### **GRANT AND ACCEPTANCE OF FRANCHISE**

#### **2.1 Grant and Acceptance of Franchise**

Subject to the terms and conditions of this Agreement, the City hereby grants to the Company the exclusive right to Collect, transfer, transport, recycle, process, and dispose of all Solid Waste generated or coming to exist in the City.

The Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

#### **2.2 Administrative Fee**

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to Sixteen Thousand dollars (\$16,000) within seven days of execution of this Agreement to reimburse the City for a portion of its staff time and out-of-pocket costs of awarding this Franchise.

#### **2.3 Exclusive Nature of Franchise**

During the term of this Agreement, except as otherwise provided in Section 2.9, or as may otherwise be provided by federal or State law, the rights granted to the Company under this Agreement shall be exclusive to the Company. The City will not let any

contract to, or enter into any agreement with, any other Person for the performance of the services herein required to be performed by the Company.

The City shall protect the Company's exclusive rights by proper ordinances. Should the City be required to take administrative, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the City for its reasonable administrative, or other legal costs related to any such action. Nothing herein shall preclude Company from taking such legal action against third parties, as it deems appropriate to protect the exclusive nature of its Franchise.

#### **2.4 Effective Date**

The effective date of this Agreement shall be April 1, 2012 ("effective date").

#### **2.5 Term of Agreement**

The term of this Agreement shall commence on April 1, 2012, and expire on June 30th, 2022, with two twenty four (24) month extensions permitted upon written agreement of both parties. at the City's option. The City may, upon 90-day advance written notice to Company prior to Agreement expiration, exercise the extension option. Rates beyond five (5) years are subject to the Proposition 218 process.

#### **2.6 Conditions to Effectiveness of Agreement**

The obligation of the City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the City.

- a) Accuracy of Representations. Representations and warranties made by the Company throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.
- b) Absence of Litigation. There is no litigation pending in any court challenging the award of this Franchise to the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance and Bonds. The Company has furnished evidence of the insurance and bonds required by Article 8.
- d) Effectiveness of the City Council Action. The City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the effective date of this Agreement.

#### **2.7 Proposition 218**

The rates set forth in Exhibit 3 of this Agreement are contingent upon approval of any refuse pick-up rate increase imposed herein by the Del Mar City Council pursuant to the provisions of Article XIID of the California Constitution. City agrees to undertake the notice and protest process as provided in Article XIID with respect to any proposed rate increase, to the extent required by applicable law. Should a majority protest, as

provided for under Article XIID, invalidate approval of any rate increases provided for herein, the parties shall undertake a new notice and protest process, or negotiate modifications to the services provided under this Agreement which would result in (a) rates equal to the rates in effect prior to the rejected proposed increase in rates, and (b) Company's operating ratio under the Agreement being equal to the operating ratio prior projected by Company at that time this Agreement is executed as demonstrated to the satisfaction of City. Following such negotiations, the City shall undertake the Article XIID process until voters accept rates proposed by the parties. Regardless of voter approval of rates under this Agreement, Company shall continue to have the exclusive right to provide the services contemplated by this Agreement.

## **2.8 Delegation of Authority**

The administration of this Agreement by the City shall be under the supervision and direction of the City Manager's Department, and the actions specified in this Agreement, unless otherwise stated, shall be taken by the City Manager or the City Manager's designee.

## **2.9 Limitations on Scope of Franchise**

The Franchise granted to the Company shall be exclusive except as to the categories of Solid Waste listed in this Section. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to and Collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City that is otherwise required by law:

- a) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;
- b) Construction and Demolition Debris that is incidentally removed by a duly licensed construction or demolition company or as part of a total service offered by said licensed company or by the City, where the licensed company utilizes its own equipment and employees;
- c) Solid Waste, including Recyclable Materials and Yard Waste, which is removed from any Premises by the Customer, and which is transported personally by the Customer off such Premises (or by his or her full-time employees) to a processing or Disposal Facility;
- d) Recyclable Materials and Yard Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- e) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- f) Yard Waste removed from a Premises by a gardening, landscaping, or tree trimming company utilizing its own equipment and employees as an incidental part of a total service offered by the company rather than as a hauling service;

- g) Collection services related to take-back programs in which manufacturers or retail establishments accept extended responsibility for Recycling goods produced or sold.
- h) Hazardous Waste, medical waste, and radioactive waste, regardless of its source; and,
- i) The casual or emergency Collection, removal, Disposal or diversion of Solid Waste by the City through the City officers or employees.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to collect any or all types of the Solid Waste listed in this Section 2.9 without seeking or obtaining approval of the Company under this Agreement. Subject to Section 2.10.3, City may enter into agreements with other entities for the solid waste and Recycling services not provided for in this Agreement, including but not limited to, Disposal of street sweeping debris and Yard Waste from City landscaping maintenance operations, contract services, “niche” Recycling services, and Hazardous Household Waste pickups.

This grant to the Company of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with State and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing State and federal laws with regard to Solid Waste handling, exclusive Franchises, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by the Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, although it shall be the responsibility of the Company to minimize the financial impact to other services being provided as much as possible, the Company may seek a rate adjustment, and shall have other recourse, as set forth in Section 5.5 of this Agreement.

## **2.10 City's Right to Direct Changes**

### **2.10.1 General**

The City may direct the Company to perform additional services (including new diversion programs, etc.) or modify the manner in which it performs existing services or bills for services. Pilot programs and innovative services that may entail new Collection methods, different kinds of services and/or new requirements for Customers, and alternative rate structures are included among the kinds of changes that the City may direct. The Company shall be entitled to an adjustment in its Company Compensation



for providing such additional or modified services, if Company demonstrates that its cost of service would increase.

#### **2.10.2 New Diversion Programs**

The Company shall present, within 30 days of a request to do so by the City, a proposal to provide additional or expanded diversion services. The proposal shall contain a complete description of the following:

- Collection methodology to be employed (equipment, manpower, etc.);
- Equipment to be utilized (vehicle number, types, capacity, age, etc.);
- Labor requirements (number of employees by classification);
- Type of materials Containers to be utilized;
- Provision for program publicity/education/marketing; and,
- Three-year projection of the financial results of the program's operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

#### **2.10.3 City's Right to Acquire Services**

Subject to Section 2.10.2, the Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.10.2, the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the Company to provide such services.

### **2.11 Ownership of Solid Waste**

Through the City's membership in the Regional Solid Waste Management Association, the City has committed one hundred (100) percent of its solid waste stream that is controlled through the Franchise Agreement to the transfer or disposal facility directed to be used by RSWA. Yard waste, organics and any recyclable materials are not required to be committed through the RSWA Agreement. Once Solid Waste is collected, ownership and the right to possession shall transfer directly from the Customer to the Company by operation of this Agreement.

Subject to the Company's objective to meet the source reduction and Recycling goals which apply to the City and the City's right to direct the Company to process and dispose of Refuse at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site as required by the City's RSWA agreement, the Company is hereby granted the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Company. Subject to the provisions of this Agreement, the Company shall have the right to retain any benefit resulting from its

right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Yard Waste, and Recyclable Materials which it Collects.

Solid Waste, or any part thereof, which is disposed of at a Disposal Site or Sites (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Company. The City may obtain ownership or possession of Refuse placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to the Company.

#### **2.12 Company Status**

The Company represents and warrants that it is duly organized, validly existing and in good standing under all applicable laws. It is duly licensed and qualified to transact business in the State of California and has the power to provide services as required by this Agreement.

#### **2.13 Company Authorization**

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the Company (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of the Company have authority to do so. Company shall authorize one employee for the City as a single point of contact for issues arising under this Agreement. City may accept that this employee's actions are taken on behalf of and with the full approval of the Company.

#### **2.14 Annexations**

This Agreement extends to any territory annexed to the City during the term of this Agreement which is not within the service area for another solid waste enterprise which qualifies under Public Resources Code Section 49521 to continue to provide solid waste services shall be added to the Franchise area covered by this Agreement. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph. The City acknowledges that equipment, such as trucks, carts and containers, may take time to procure, and therefore, shall not penalize the Company for reasonable delays in the provision of services to annexed areas due to procurement delays that are not within the control of the Company.

#### **2.15 Business License**

The company and any subcontractors shall annually obtain a City of Del Mar Business License. No contracts for services provided in the City shall be awarded to any vendor

until such business license has been obtained, and all fees paid therefore, by the vendor and the subcontractors.

## **ARTICLE 3**

### **DIRECT SERVICES**

#### **3.1 Refuse Collection Services**

The work to be done by the Company pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve the Company of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not. The work to be done by the Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents within the City are provided reliable, courteous and high-quality Collection services at all times.

##### **3.1.1 Residential Refuse Cart Service**

Company shall Collect Refuse delivered for Collection by Single-Family Customers and Multi-Family Customers not receiving Bin service not less than once per week. The designated Collection location of Containers, if disputed by the Customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Company to relocate the Collection location. City-wide semi-automated Cart service must be implemented within 180 days of the start of service under this Agreement. Company will supply each Residential Refuse Cart Customer (single family residential and duplex residential) with new Refuse Carts of 96- 64- or 32-gallons, as requested by Customer as described in Section 3.7.1.1. Customers shall be charged based upon the size and number of Refuse Carts requested.

Customers may request "Backyard Service" for an additional charge in accordance with the approved rate schedule. Backyard Service means that Company removes all Collection Carts, Yard Waste bundles and Refuse Cart Overages per Section 3.1.2 from a Cart Customer's designated Collection location other than curbside, such as backyard, side yard, or driveway, for Collection, and returns Carts when Collection is complete.

##### **3.1.2 Refuse Cart Overage**

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two annual pickups, taking place on the regular Collection day, per calendar year of material that does not fit

in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse. Contractor shall instruct Customers to call in for overage pickups. For a fee, Contractor shall collect all Refuse placed for Collection in addition to the foregoing two (2) pickups to be provided at no charge whether or not pickup was called in. If pickup was not called in, a notice shall be left for the Customer indicating a Cart overage Collection was made.

Contractor shall provide a three-month grace period at the start of service in which it will leave notices on Carts when overages are Collected, informing Customers as to this new policy, including how to call for an additional or larger Refuse Cart. Recording of overage pickups and overage charges will begin three months from the start of this agreement.

Residential Customers may be charged per pickup in accordance with the approved rate schedule in Exhibit 3 for overage pickups above two (2) per year. In addition to the two (2) free pickups, Contractor shall Collect all additional Refuse placed out for Collection in the Residential Customer's own Containers (bags, barrels, etc.) at no additional charge for two weeks beginning each December 26. This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Section 1.9 and 3.1.5. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

### **3.1.3 Commercial and Multi-Family Service**

#### **3.1.3.1 Bin Services**

Company shall provide Bin service to Commercial and Multi-Family Customers that use Bins. Company shall Collect and remove all Refuse that is placed in Bins from Multi-Family and Commercial Premises receiving Bin service at least once every week or more frequently if required to handle the waste stream of the Premises where the Bins are located. Customers may lease from Company or third parties compaction equipment that may be attached to Bins. The provision of compaction equipment is outside the scope of this Agreement. Collection from Bins using these devices remains within the scope of this Agreement unless otherwise excluded per Section 2.9.

#### **3.1.3.2 Temporary Bin Services**

Company shall provide exclusive Temporary Bin Service to all Customers requesting such service. However, if Company does not provide the requested Container within 48 hours of request, Customer can call and receive Temporary Service from another company.

Special consideration shall be given when determining the pickup area to ensure that the flow of traffic is not impeded.

It is the responsibility of the Customer to obtain an Encroachment Permit from the City if the Bin will be located on the City right-of-way.

#### **3.1.3.3 Commercial Cart or Can Service**

Company shall Collect Commercial Refuse placed at the curb in Company-provided 32, 64 or 96-gallon Carts or, if automation of Collection is not feasible, 30-gallon Cans labeled with the Customer's address and days of the week to be Collected. Company shall provide such service at the frequency requested by the Customer, but not less than once per week.

#### **3.1.3.4 Locking Bins**

Contractor may charge for locking Bin service in accordance with the approved rate schedule. No additional fees shall be permitted for provision or installation of the lock.

#### **3.1.3.5 Scout Service/Push-Out Service**

Contractor may charge an additional fee for scout service, whereby a second vehicle is used to position the Container for Collection, or push-out service, whereby the driver must move the Container a greater than fifteen (15) feet for Collection as indicated in the approved Rate Schedule.

### **3.1.4 Rolloff Box/Bin Service**

Company must provide permanent Rolloff Box service to all Customers requesting service at a rate not to exceed the approved maximum rate contained in Exhibit 3. Customers may lease from Company or third parties compactor Rolloff Boxes. The provision of compaction equipment is outside the scope of this Agreement. Collection from these compactor Rolloff containers remains within the scope of this Agreement, unless otherwise excluded per Section 2.9.

### **3.1.5 On-Call Bulky Waste Pickup**

Company shall provide Bulky Waste pickup services three times per year to all Customers. Customers will be instructed in educational materials to provide the Company with forty-eight (48) hours notice, and the items will be Collected on the Customer's regular Collection day. Bulky Waste Collected by Company may not be landfilled or disposed of until the following hierarchy has been followed by Company:

- a) Reuse as is (if energy efficient)
- b) Disassemble for reuse or Recycling
- c) Recycle
- d) Disposal

This hierarchy precludes the use of front- or rear loading packer vehicles for bulky goods unless the compaction mechanism is not used to compact the Bulky Goods, unless they have been designated for Disposal.

#### **3.1.5.1 Single and Multi-Family Customers**

Single and Multi-Family Customers, whether Bin, or Cart Customers, may request up to three free Bulky Waste pickups per year at no charge. Up to five (5) items may be put out for collection at each pickup. Electronic waste is eligible for pickup under this program. Textiles may be set out and included in the program if bagged, without counting as one of the five items. Collections in excess of three per year will be billed in accordance with the approved Rate Schedule in Exhibit 3.

#### **3.1.5.2 Commercial Customers**

Company may charge Commercial Bin, Cart, and Can Customers for pickups in accordance with the rate schedule contained in Exhibit 3, based on the number and type of items. Timing and place of pickup shall be arranged so traffic and sidewalks are not obstructed prior to or during pickup.

### **3.1.6 Commercial Container Overflow Procedures**

#### **3.1.6.1 Service Level Upgrade**

Customers that regularly produce more Solid Waste than their current level of service can accommodate may have their service level increased in accordance with the following procedure:

First Incident in Three Month Period – If more material is placed for Collection than fits in a Container, Company shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer (at both the service and billing addresses) the picture and a letter instructing that the next instance of an overflowing Container may result in a charge, and possibly in an increase in the level of service.

Second Incident in Three Month Period – Upon the second event of an overfilled Container in a three-month period, Contractor shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer the picture and a letter instructing that a third incident in that same three month period will result in an increase in the level of service, and that a Container overage fee may be charged in the future to clean up spilled waste or waste left beside Container for Collection.

Third Incident in Three Month Period – Upon the third event of an overfilled Container in a three-month period, Contractor shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer the picture and a letter documenting the third incident. Thereafter, Company is

authorized to charge an overage fee, and deliver the next larger-sized Container, or an additional Container as selected by the customer, or increase frequency of Collection, as best addresses Collection needs, to the Premises, and to adjust the service rate to the rate then in effect for service using the delivered Containers.

#### **3.1.6.2 Container Overage Fee**

If Solid Waste was left beside the Container for Collection or Company cleaned up spilled waste from an overflowing container, Company may charge the Container Overage Fee in the approved rate schedule after the third incident in one calendar year, provided Company has sent written warnings for the first two incidents.

### **3.2 Recycling Services**

**The City of Del Mar Municipal Code 11.20.11 requires the separation of recyclable materials for both residential and commercial customers.**

#### **3.2.1 Residential Recycling Service**

Company shall provide weekly Recyclable Material Collection to all Residential Cart Customers on the same day as Refuse Collection. Company will provide each Residential Customer with a Recycling Cart. Company will make available one or more additional Recycling Carts to Customers who regularly generate more Recyclable Material than will fit into their existing Recycling Cart(s). No extra fee will be charged for Recycling service or additional Recycling Carts.

Company shall provide new 96-, 64- and 32-gallon Recycling Carts to all Residential Cart Customers as described in Section 3.7.1.1. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts for Collection.

At a minimum, Recyclable Material Collected shall include, but not be limited to: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 – 7 (including polystyrene foam/Styrofoam but not polystyrene peanuts); plastic toys and tools, and other rigid plastic materials (if readily identifiable as being recyclable); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

#### **3.2.2 Commercial Recycling Service**

Recyclables Collection - The Company shall provide Recyclable Material Collection service to all Commercial Customers requesting it from the Company. Commercial Customers must use Company's services for Recyclable Material Collection unless Section 2.9 applies. The Company agrees to provide Recycling Bins or Carts to Bin Refuse

Customers in sufficient quantities to meet the Recycling needs of each Customer. Recycling Collection programs shall be made available at a minimum for: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic (type 1); HDPE plastic (type 2); plastics types 3 – 7 ( including polystyrene foam/Styrofoam but not polystyrene peanuts); plastic toys and tools, and other rigid plastic materials (if readily identifiable as being recyclable); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

The Company also agrees to use commercially reasonable efforts to make programs available for all other Recyclable Materials for which it has established markets. The Company shall notify all Customers via a mailed flyer each year of the availability of Recycling Collection programs.

Commercial Recycling Site Visits - Company will send a Company representative to visit each Multi-Family Bin and Commercial Customers' Premises not currently subscribing to recycling service and meet with the Customer for the purpose of establishing a Recycling Program. Fifty percent (50%) of the Customers shall be contacted within the first six (6) months, and one hundred percent (100%) of the Customers shall be contacted during the first twelve (12) months. Company will provide a monthly log to the City, including the name and address of Customer, the date of the visit and the contact name and phone number, demonstrating that the required visits have been made, and reason provided for not establishing a recycling program. Company shall ask, and the report shall indicate, whether the Customer has another Recycling program in-house or through a third party and, if so, what type.

At the end of the first six (6) months of service, and again at the end of the first twelve (12) month of service, Company will provide City with two (2) lists, one (1) of Multi-Family Bin and Commercial Customers with Company Recycling Containers and one (1) of Multi-Family Bin and Commercial Customers without Company Recycling Containers. Each list shall include Customer names and addresses, contact names and phone numbers, Refuse service levels including number and size of Containers and number of weekly pickups, and Recycling service levels (if applicable), including number and size of Containers and number of weekly pickups. Lists shall also include whether the Customer indicated that they had an alternative recycling program and, if so, what type. The lists shall be sorted so that Customers with and without Recycling Containers are grouped separately.

Company will visit all new Customers added after the start of this Agreement within two weeks of the start of new service. Company will continue to conduct on-site visits to Multi-Family Bin and Commercial Customers throughout the term of the Agreement to implement new and optimize existing Recycling programs for each Customer. A list



of new account and ongoing account visits, including all the information required above, shall be provided to the City each six (6) months for the term of the Agreement.

### **3.2.3 Funding of City Programs**

Company shall provide the City with annual funding for programs as follows. The annual cost is payable in quarterly installments on July 1, October 1, January 1 and April 1 of year. Costs will be increased annually by the same factor applied to CPI pricing:

<b>Program</b>	<b>Annual Cost</b>
AB 939 Programs	\$ 50,000
City Park, Beach and Downtown Waste and Recycling Can Collection	\$ 25,000
City Park Waste and Recycling Container Purchase and Replacement	\$ 12,000
RSWA Household Hazardous Waste Drop-Off and Collection Program	\$ 14,800
Total	\$101,800

### **3.2.4 Construction and Demolition (C&D) Debris Recycling**

The Company shall make reasonable efforts to prevent Construction and Demolition Debris that is suitable for Recycling from being taken to the landfill by:

- Following the City's Construction and Demolition Debris Diversion requirements of the Municipal Code, and as required by Part 11 of Title 24 is named the California Green Building Standards Code, and is also called the CALGreen Code;
- Transporting all Construction and Demolition (C&D) Debris loads to a permitted mixed materials C&D facility where it will be processed for reuse or recycling, or, if material has been source separated, it may be taken directly to a facility for reuse;
- Inquiring of all Rolloff Box Customers as to the type of Solid Waste to be generated, instructing all potential Construction and Demolition Debris generators regarding how to divert such materials, including information on deconstruction options available, and providing a how-to brochure with alternative processing Facility contact information; and,
- Providing materials that can be provided to contractors to educate them on Construction and Demolition Debris diversion.

### **3.2.5 Marketing and Sale of Recyclable Materials**

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials, except to the extent that source separated Recyclable Materials are

purchased from Customers and revenues from their sale is remitted, or credited, to Customers.

### **3.2.6 Universal Waste (U-Waste)**

Company shall instruct Customers not to set out Universal Waste for Collection except through City designated programs. The Company will issue warnings to Customers who inappropriately place Universal Waste in Containers for Collection, and shall tag and not Collect Universal Waste improperly placed for Collection if identified prior to Collection. In the event that Company Collects improperly set-out Universal Waste, Company is responsible for disposing of it at a properly permitted facility.

### **3.2.7 Residential Food Waste Diversion Program**

At its option, Company may submit a proposal to the City detailing a program to collect source-separated Food Waste from Residential Cart Customers. Program and cost shall be subject to City approval. The proposal may take the form of a pilot program.

Company shall develop, produce and deliver public education materials to all Customers in the program. Materials shall be subject to advance City approval.

Company shall collect baseline tonnage data from the program for a 90-day period prior to the start of the program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of Food Waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Residential Food Waste program Citywide at any time during the Agreement term, Company shall receive an adjustment to Company Compensation, if justified, in accordance with Section 2.10 of the Agreement.

### **3.2.8 Commercial Food Waste Diversion Program**

At its option, Company may submit a proposal to the City detailing a program to collect source-separated Food Waste from Commercial Food Waste generating Customers. Program may take the form of a pilot program. Program shall be subject to City approval.

Prior to the start of program, Company shall meet with all participants to provide management and employee training, the start and end dates, materials to be collected and required Food Waste capacity prior to the start of the program. Company shall collect baseline tonnage data from pilot Customers for a 90-day period prior to the start of the program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of Food Waste recovered by the pilot program.

Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month. If City instructs Company to implement a Commercial Food Waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company shall receive an adjustment to Company Compensation, if justified, in accordance with Section 2.10 of the Agreement.

### **3.3 Yard Waste Program**

#### **3.3.1 Residential Yard Waste Collection**

Company shall provide weekly Collection of Yard Waste on the same day as Refuse and Recyclable Material Collection to all Refuse Cart Customers. Company shall distribute to each Residential Cart Customer one new 96-, 64- or 32-gallon Yard Waste Cart if requested by the Customer – cart shall be paid for by Customer, but shall be offered at Contractor's cost. Yard Waste Services shall be provided at no additional charge.

Company shall Collect up to an equivalent volume of nine (9) 32 gallon cans of Yard Waste. This volume may also take the form of tied bundles of Yard Waste. Yard Waste bundles are limited to a maximum of four (4) feet long and eighteen (18) inches in diameter, and bundled weight limit of fifty (50) lbs.

#### **3.3.2 Rolloff Box Service**

Company shall make permanent Rolloff Box Yard Waste Collection available to all Customers at the actual tipping fee cost at a Green Waste processing facility, not to exceed the Rolloff Box Refuse rate for Collection and Disposal.

#### **3.3.3 Holiday Tree Collection Program**

Company shall operate and notify Customers about an annual Holiday Tree Collection and Recycling program. The program shall include both Collection from Single Family and Multi-Family Customers. Collection period shall be from the first Collection day after December 25 and ending on the second Saturday in January. The Company shall reasonably cooperate with the City in the scheduling and operation of the Holiday Tree Collection program. Trees must be cut into lengths no longer than four (4) feet, be free of ornaments, garlands, tinsel, and flocking, and stands must be removed. Trees shall be diverted from Disposal, flocked trees are exempted.

#### **3.3.4 End Uses for Yard Waste**

Company shall divert uncontaminated Yard Waste materials from Disposal. The Company must provide end uses for Yard Waste that achieve diversion credits for the City according to regulations established by CalRecycle.

### **3.3.5 Annual Mulch Program**

Company to offer a program in which residents may obtain free compost, mulch or wood chips. Program to be offered at least one week during the year, possibly in conjunction with the Fuel Reduction Program. Company also to provide assistance, where needed, in delivery of compost bins. Company shall work with City to coordinate delivery of compost bins to individual residential addresses within a mutually agreed single delivery period per year.

### **3.4 Warning Notice**

The Company shall warn Customers who have non-Recyclable Materials in their Recycling Container or contaminated Yard Waste in their Yard Waste Container. If, after three written warnings in a six-month period, the Container continues to be contaminated, the Company may remove the Recycling or Yard Waste Container from Customers who fail to sort properly and segregate Recyclable Materials or Yard Waste. Company must leave instructive warning notices on the contaminated Containers, indicating the issue, how to correct it, and that the Container may be removed if behavior is not corrected. Company may charge a Contamination Fee in an amount set forth in Exhibit 3. The format of the warning notice must be approved by the City. Customer may regain Cart after a six-month period or if there is a change in Customer at the address in question. The Company shall report monthly to the City any warning notices issued. Customers losing their Recycling or Yard Waste cart may need to upsize their Refuse disposal capacity at their cost.

### **3.5 City Services**

#### **3.5.1 City Facilities Collection**

Company shall Collect and dispose of all Refuse generated and Recyclable Materials and Yard Waste accumulated at Premises owned and/or operated by the City at no additional charge, including Bulky Waste items placed for Collection by City. Such Premises include, but are not limited to, offices, and street maintenance operations. Collections shall be scheduled at a time mutually agreed upon by the Company and the City. Company will provide all Containers required. Except as otherwise provided in this Section 3.5, the obligation to provide such services at no cost shall not apply to Solid Waste generated, accumulated or collected by parties other than the City.

#### **3.5.2 Abandoned Item Collection**

Company shall collect items abandoned in the public right-of-way within 24 hours of notification by City at no additional charge.

#### **3.5.3 Fire Prevention and Fuel Reduction Program**

Contractor shall, at no cost to the City, participate in the City's annual fuel reduction program. In this program, within a single two-week per year period to be designated by the City, Contractor shall provide Rolloff boxes and 3-yard green waste bins at various locations in the City, as requested by residents and

the City Fire Department, to accommodate residential cleanups of weeds, brush and tree trimming. An individual resident may not request more than two 3-yard bins. 40-yard rolloff bins may be requested by a community group, or group of residents of not less than 8 single-family dwellings.

#### **3.5.4 City Shred Event**

Contractor shall, at least twice annually, provide at no cost an event to which City residents and businesses can bring confidential materials for shredding. All shredded materials must be recycled. Customers will be limited to 3 standard office storage boxes.

#### **3.5.5 City Sponsored Events**

The Company shall provide Refuse and Recyclable Material Collection service at up to six City designated events each year. This shall include providing Containers to Collect and Dispose of all Refuse, using waste boxes, waste box liners, Roll-Off Boxes and Bins, and providing Containers to Collect source-separated Recyclable Materials. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors.

#### **3.5.6 Emergency Collection and Disposal Service**

Company will assist City at the City's request for emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, tidal wave/tsunami, riot or civil disturbance, or as otherwise determined necessary by the City), by providing Collection vehicles and drivers normally assigned to the City, at the rates provided in Exhibit 3. The rate for this service is to remain fixed for the term of the Agreement.

### **3.6 Containers**

#### **3.6.1 Carts**

##### **3.6.1.1 Residential Cart Distribution**

Company shall mail a return postage paid postcard and information describing the new rate structure and Cart options to all Residential Cart Customers (see Section 4.3.2). Company must obtain City approval of post card and information to be sent prior to distribution. Postcard will provide Customers with an opportunity to select the size and number of Refuse, Recycling and Yard Waste (if purchased) Carts to be delivered. Refuse and Recycling carts are to be delivered at no cost. Costs for the optional Yard Waste cart will be provided on the Postcard. Company shall deliver all new Carts to each Customer. Company shall directly invoice the Customer for the provided Yard Waste cart.

If a selection is not made, Customers will receive one Refuse Cart and one Recycling Cart, each 64 gallons.

After initial Cart distribution, Customers may request one Cart size exchange at no charge each year. After one exchange per year, Customers may request Cart exchanges in accordance with the approved rate schedule. One Cart exchange includes all Cart adjustments requested at one time, and multiple Carts and Cart types (Refuse, Recycling, Yard Waste) may be exchanged.

Company shall provide City the number and size of Refuse Cart(s) used by each Customer, at the start of City-wide automation (no later than six weeks prior to the start of new services to allow City sufficient time to update its Billing system) and as changes are made throughout the Term for Billing purposes. Customers may request an exemption from Cart service as provided for in Section 3.7.1.10.

#### **3.6.1.2 Removal of Existing Containers**

Upon and after distributing new Refuse, Recycling and Yard Waste Carts, Company shall remove, and Recycle to the extent possible before Disposing, Customer-provided Cans, if Customer does not intend to retain the Cans. Company shall establish and advertise a system whereby Customers can indicate what Cans should and should not be Collected. Company is responsible for all costs associated with Container collection and Disposal or Recycling. Company may retain any scrap value received from the Recycling of collected Containers.

#### **3.6.1.3 Cart Design Requirements**

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval. Carts shall include a minimum of 50% recycled material, or the highest percentage reasonably available, and be recyclable.

#### **3.6.1.4 Capacity**

The Company shall provide new Carts in three sizes for Residential Refuse, Recycling and Yard Waste Collection. Sections 3.1, 3.2 and 3.3's references to Cart sizes of 32, 64, and 96-gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 30 to 40-gallons,
- 60 to 70-gallons, and
- 90 to 101-gallons.

#### **3.6.1.5 Cart Handles**

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

#### **3.6.1.6 Cart Lid**

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

#### **3.6.1.7 Cart Colors**

The Refuse, Recycling and Yard Waste Carts will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Refuse Carts will be black or gray. Recycling Carts will be blue. Yard Waste Carts, including Commercial Yard Waste Carts, will be green.

#### **3.6.1.8 Cart Labeling**

Company shall label and hot stamp Carts with information meeting the requirements of this section, and including graphics indicating which materials may and may not be placed in each cart and instructions on how to properly dispose of HHW. New Carts shall be delivered with labels attached and hot stamped. Labels shall be replaced when worn. Labeling and hot stamping must be approved by City prior to ordering Carts. Company's name and phone number shall be included on a label on the Cart lid.

### **3.6.1.9 Identification Markings**

All markings on the Containers shall be approved by the City in advance of ordering Carts. **TRASH, RECYCLING** or **GREEN WASTE** must be hot stamped in white color on the front or sides of the Cart in characters no less than one inch.

Company shall develop labels identifying materials that are and are not permitted in each Cart type, in English, with graphics and instructions for proper disposal of HHW, and shall place labels on top of all Carts delivered to Customers.

### **3.6.1.10 Exemption from Cart Service**

Customers desiring an exemption from Cart service due to physical hardship or space limitations may apply for an exemption at the time that they are provided with the opportunity to select Cart size. Customers requesting an exemption will be permitted to continue with the use of their 32-gallon containers. They should indicate the level of service (the maximum number of 32-gallon containers set out each week). They will be billed for the volume of material corresponding to the rate schedule in Exhibit 3.

## **3.6.2 Cart Performance Requirements**

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

### **3.6.2.1 Cart Load Capacity**

Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

<b>Cart Size (Gallons)</b>	<b>Minimum Load Capacity (LBS)</b>
<b>90-101</b>	<b>200</b>
<b>60-70</b>	<b>130</b>
<b>30-40</b>	<b>70</b>

### **3.6.2.2 Cart Durability**

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Agreement:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;



- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

#### **3.6.23 Chemical Resistant**

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

#### **3.6.24 Stability and Maneuverability**

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position. The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction. The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

#### **3.6.25 Lid Performance**

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,

- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

#### **3.6.26 Repairability**

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the contractor personnel. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein.

### **3.6.3 Cart Ownership and Maintenance Responsibilities**

All Carts that are distributed by Company under this Agreement, shall remain the property of the Contractor. The Company shall be responsible for Cart repair and maintenance, and replacing lost, stolen or damaged Carts within three business days of receiving notice (or on the next service date) at no additional charge to the Customer or to the City. Graffiti shall be removed or the Container replaced within two business days of receiving notice (or on the next service date). However, the Company may charge the Customer for repairing or replacing a Cart if the damage was due to the Customer's willful negligence or abuse. In no event shall this charge be greater than the Company's actual cost for replacement parts or the new Cart.

#### **3.6.4 Bins and Compactors**

The Company shall provide Customers with Bins, or Compactors upon request, for Collection of Solid Waste. Customers may obtain Bin Compactors and Roll-Off Compactors from either Company or a third party; the leasing of such equipment is outside the scope of this Agreement. The Company shall maintain its Containers in a clean, sound condition free from Putrescible residue. Containers shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances, which were designed for movement, loading, or unloading of the Container, shall be maintained in good repair. Company shall inspect, and if necessary or requested by the Customer, clean or replace all Containers once per year at no charge. Company shall perform cleaning or replacement of Containers more frequently if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings in accordance with the approved rate schedule. Company shall remove graffiti at no additional charge from any Container within two business days of request by City or Customers. All Bins and Compactors provided by Company shall remain the property of Company. Each Container placed in the City by the Company shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall identify the Containers that are assigned to each Commercial Customer, and each Multi-Family Customer with Bin service, using a method that is acceptable to the City. Company shall repaint Bins upon the City's request.

### **3.6.5 Rolloff Boxes**

The Company shall provide clean Rolloff Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall properly cover all open Rolloff Boxes during transport as required by the State Vehicle Code.

## **3.7 Diversion Requirements**

### **3.7.1 City-wide Diversion Rate**

Should the City not significantly exceed the City-wide AB 939 diversion minimum or that of any subsequent State requirements for its entire waste stream (excluding Fairgrounds tonnage), and if the City determines that the Company has not maximized diversion from the services and programs contemplated under this Agreement, the Company agrees to undertake its best reasonable efforts to implement programs and provide equipment necessary in order for the City to significantly exceed the State requirement. Such additional efforts and programs may, when justified pursuant to Section 5.5, prompt rate adjustments.

## **3.8 Operations**

### **3.8.1 Schedules**

To preserve peace and quiet, no Refuse, Recyclables or Yard Waste shall be Collected between the hours of 6:00 P.M. and 7:00 A.M. Site and route-specific exemptions may be made to this limitation by the City Manager, or the City Manager's designee. Company shall adjust the early morning start point of Collection routes to address and minimize service complaints when warranted and as practicable. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, alternate Collection shall be performed on the following day, with collection delayed for one day for the remainder of the calendar week. One exception shall be that Customers with seven day per week service will continue to be serviced on all holidays. All other Collection days falling on a legal holiday (other than those above) shall remain as scheduled. Residential Collection shall only take place Monday through Friday, except when Saturday Collection is necessary due to a holiday.

For example, a Wednesday holiday would delay Wednesday, Thursday, and Friday collection each to the following day. Friday Residential Collection would be permitted on Saturday. Saturday service would only be provided to seven day per week Customers. Sunday service would be uninterrupted as Sunday service is typically provided to seven day per week customers.

The Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with the City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of complaints. If the plan is determined to be inadequate by the City, the Company shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days.

### **3.8.2 Vehicles**

**A. General.** The Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms as described in this Agreement. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall be done so at the Company's sole expense. The Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

**B. Specifications.** At all times during the Agreement term shall Company use vehicles for the Collection of Refuse, Recyclables or Yard Waste in the City that are keep clean and with a freshly-painted appearance. All route vehicles shall use liquefied natural gas (LNG) or compressed natural gas (CNG) within six months of the start of service under this Agreement. Company shall be in compliance with all rules and regulations currently in force or passed during the contract term, including San Diego Air Pollution Control District (SDAPCD) and the California Air Resource Board's regulations. No rate adjustments shall be made for such changes in law. All vehicles used by the Company in providing Refuse, Recyclables or Yard Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow.

Roll-Off Box vehicles, Container delivery vehicles, scout vehicles, supervisor pickup trucks, and vehicles used for holiday tree Collection, special events and Bulky Item Collection are only required to use LNG or CNG fuel to the extent required by law, including SDAPCD and California Air Resources Board regulations, with no rate adjustments granted for such changes in law.

**C. Vehicle Identification.** The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles. Vehicles shall all be painted in a standard color.

#### **D. Cleaning and Maintenance**

- 1) The Company shall maintain all of its properties, vehicles, Facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.
- 2) Vehicles used in the Collection of Refuse, Recyclables and Yard Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the San Diego County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) The Company shall repaint all vehicles used in the Collection of Refuse, Recyclables or Yard Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three years.
- 4) The Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Company shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.
- 5) The Company shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. The Company shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- 6) Upon request by the City, the Company shall furnish the City a written inventory of all equipment used in performing Collections, including Collection vehicles, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

**E. Operation.**

- 1) Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. The Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.
- 2) Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed 75 dB when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground. Company shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.
- 3) Subject to Section 8.1, the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces (excluding normal wear and tear), whether or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.

**F. City Inspection per Code.** The City may cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the applicable provisions of the State Vehicle Code, including all Vehicle Code sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with, and its return to service has been approved by, the City.

**G. Brake Inspections.** The brake system of each vehicle used in performance of this Agreement shall be inspected and certified according to State law by the California Highway Patrol or by a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be made available to the City within thirty (30) days of written request. Failure to submit the required certification if requested shall constitute a breach of this Agreement.

**H. Correction of Defects.** Following any inspection, the City Manager, or their designee, shall have the right to cause the Company, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe,

unsanitary or unsightly. The City Manager's determination may be appealed to the City Council, which decision shall be final.

### **3.8.3 Litter Abatement**

**A. Minimization of Spills.** The Company shall use due care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the Collection or transportation process. If any Refuse, Recyclables, Yard Waste or fluids leak or are spilled during Collection, the Company shall promptly clean up all such materials. Company shall notify City within 30 minutes of spill of any material with the potential to reach the storm drains, including all liquids. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

The Company shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste transfer between vehicles, without prior written approval by the City.

**B. Clean Up.** During the Collection or transportation process, the Company shall clean up litter in the immediate vicinity of any Refuse, Recyclables or Yard Waste storage or Collection area whether or not the Company has caused the litter. The Company shall identify instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. The City will attempt to rectify such situations with the Customer if the Company has already attempted to do so without success.

### **3.8.4 Personnel**

The Company shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

The Company also agrees to establish and vigorously enforce an educational program that will train the Company's employees in the identification of Hazardous Waste. The Company's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly dispose of such Hazardous Wastes at the processing Facility or Disposal Site.

The Company shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. The Company shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is

found to be discourteous or not to be performing services in the manner required by this Agreement, the Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The Company shall provide suitable operations, health, and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

#### **3.8.5 Identification Required**

The Company shall provide its employees, companies and subcontractors with identification for all individuals who may make personal contact with residents or businesses in the City. The City may require the Company to notify Customers yearly of the form of said identification. The Company shall provide a list of current employees, companies, and subcontractors to the City upon request.

The City reserves the right to perform a security and identification check through law enforcement agencies upon the Company and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

#### **3.8.6 Fees and Gratuities**

The Company shall not, nor shall it permit any agent, employee, or subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste other than required under this Agreement.

#### **3.8.7 Non-Discrimination**

The Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or State law.

#### **3.8.8 Change in Collection Schedule**

The Company shall notify the City twenty-eight (28) days prior to, and Residential Customers not later than fourteen (14) days prior to, any change in Collection operations which results in a change in the day on which Residential Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The City's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably.



Any changes in the Collection schedule shall require the prior approval of the City. The City may require changes in the route map or Collection schedule, to improve service, to resolve complaints or for other reasons.

#### **3.8.9 Report of Accumulation of Solid Waste; Unauthorized Dumping**

The Company shall direct its drivers to note the addresses of any private Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Del Mar City Code, health codes or other laws.

### **3.9 Transportation, Disposal and Processing**

The Company shall transport all Refuse Collected under Section 3.1 to a transfer station, MRF, or Disposal Site as required by the City's RSWA agreement.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the transfer station, MRF, or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

The City reserves the right to designate the Solid Waste Facility (whether landfill, transfer station, processing Facility or Material Recovery Facility) at a later date. City and Company will use their best efforts to obtain indemnification against CERCLA, State Environmental Laws, and related claims from the operator of the landfill or other destination the City designates. City and Company agree that any resulting change in the Company's operating expenditures as a result of this designation may result in rate increases or decreases in order for the Company to maintain its operating ratio as projected under the Agreement.

### **3.10 Status of Disposal Site**

Any Solid Waste Disposal Site utilized by the Company shall be designated through the RSWA Agreement.

### **3.11 Dedicated Routes**

Given the small size of the City of Del Mar, the City does not require that routes be dedicated entirely to the City. However, the City does expect accurate and fully transparent tracking in the allocation of tonnage to the City of Del Mar for accurate disposal reporting purposes. As a small city, for whom even small disposal reporting errors can have a negative impact, vigilant accuracy in disposal tracking is imperative.

### **3.12 Service Exceptions; Hazardous Waste Notifications**

**A. Failure to Collect.** When Refuse, Recyclables or Yard Waste are intentionally not Collected from any Customer, the Company shall notify the Customer in writing, at the

time Collection is not made, through the use of a “tag” or otherwise, of the reasons why the Collection was not made.

**B. Hazardous Waste Inspection and Reporting.** The Company reserves the right to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Hazardous Waste and the right not to Collect Hazardous Waste put out with Solid Waste. The Company shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found or observed in Solid Waste anywhere within the City. In addition to other required notifications, if the Company observes any substances that it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, the Company will immediately notify the City Manager or the City Manager’s designee.

**C. Hazardous Waste Diversion Records.** The Company shall maintain records showing the types and quantities, if any, of Hazardous Waste found in Solid Waste and which was inadvertently Collected from Customers within the City, but diverted from landfilling.

### **3.13 Hazardous Waste Management Component**

The Company shall maintain a Hazardous Waste Management Plan and make it available to the City upon request.

### **3.14 Miscellaneous Additional Residential Services**

#### **3.14.1 Sharps Drop-Off Program**

Company shall supply and service once per month a collection container for residential use of hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications at no cost. Collections in excess of one per month shall be billed to the City at actual cost as documented by Company. Contractor shall also make available to Customers a sharps by mail service from a third party provider through its website, at the rate established by the third party provider from time to time.

#### **3.14.2 Compact Fluorescent Lamp Drop-Off Program**

Company shall accept and properly dispose of compact fluorescent lamps from Del Mar residents at the twice annual shred event.

#### **3.14.3 Household Battery and Cellphone Collection**

Company shall collect household batteries and discarded cellphones at no cost if placed in a sealed clear plastic bag on top of the Recycling Cart set-out for weekly collection.

#### **3.14.4 Unwanted Pharmaceutical Drop-Off Program**

To the extent allowed by law, Company shall accept and properly dispose of unwanted pharmaceuticals at the twice annual shred event.

## **ARTICLE 4**

### **OTHER SERVICES**

#### **4.1 Services and Customer Billing**

##### **4.1.1 Company Billing**

Company shall bill for all services other than described in Section 4.1.2 City Billing.

**A. Commercial and Multi-Family Bin/Cart Services.** In regard to the billing of Commercial and Multi-Family (more than four dwelling units) Bin/Cart Customers and the collection of those bills:

For Customers receiving regular Bin/Cart Service, the Company shall invoice monthly or semi-monthly in arrears with payment due within 15 days from the invoice date (i.e., the beginning of the month or the inception of service).

**B. Rolloff Box and Temporary Bin Services.** In regard to the billing of Rolloff Box Customers and the collection of those bills:

For Customers requesting Temporary Bin Service, the Company shall accept major credit cards for payment. Such Customers that do not use credit cards may be required by the Company to post a security deposit or pay on a "Cash on Delivery" (C. O. D.) basis. Any unused portion of a security deposit shall be refunded to the Customer within five (5) business days of the termination of service.

For Customers receiving Permanent Rolloff Box Service, the Company shall invoice monthly or semi-monthly in arrears with payment due within 15 days from the invoice date (i.e., the beginning of the month or the inception of service).

Company shall also perform billing for Single-Family Bin, Rolloff and Temporary Bin Services.

##### **4.1.2 City Billing**

City shall perform all billing for regular monthly Residential (with one to four dwelling units) Cart services under this Agreement. The City shall collect the monthly bill on a bi-monthly basis on its water, sewer and clean water billing. It shall be the responsibility of the Company to bill for any additional Residential services such as Bulky Waste pickups,

Cart overage pickups, and Bin Container Overage Fees, Temporary Bin Services, Rolloff Box service, or other special services.

The Company shall be responsible for processing service level change requests from Customers and shall inform the City of any changes to customer service levels at least once every 30 days.

#### **4.1.3 Company Compensation**

City shall pay Company on a monthly basis within 30 days of each monthly billing of Customers. Payment will be based on funds received from the City's billing. Payment will be accompanied by Customer and service level list (see 4.1.4 below). The City enforces collection through the shut-off of water service. Bad debt is the responsibility of the Company.

#### **4.1.4 Company Responsible for Service Level Accuracy**

Along with the City's monthly payment to the Company (see section 4.1.3 above), the City shall send the Company a list of Customer accounts, and service levels, and billed rates on which the payment is based. The Company shall review this list and must dispute or accept the accuracy of this list within 45 days of receipt.

The Company must also notify City within 72 hours of the Company being notified of any change in service.

#### **4.1.5 Review of Billings**

The Company shall review Billings to Customers under Sections 4.1.1 and 4.1.2. The purpose of the review is to determine that the amount which is being billed to each Customer is correct in terms of the level of service being provided to such Customer by the Company. The Company shall review Customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the effective date of this Agreement.

The Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of Franchise Fees owed to the City, and may be produced in a form and manner sufficient to establish the existence of Customer obligations in a court of competent jurisdiction.

#### **4.1.6 Suspension of Service Due to Non-Payment**

For Customers billed by Company, once a payment is 30 days past due, Company shall send Customers a notice that service will be suspended if payment is not made within an additional 30 days. Service may only be suspended after these minimum time

periods and notice. City will not be responsible for or assist with the collection of Company billed delinquent accounts.

#### **4.1.7 Vacation Hold**

Customers taking extended vacations of one month or more may request a vacation hold of Collection service by notifying the Company. Customers must request the service suspension in whole month increments at least 30 days in advance, and Company must provide notification of the hold to the City prior to the start of the vacation hold.

#### **4.1.8 Franchise Fee**

##### **A. Amount**

In consideration of the exclusive Franchise granted pursuant to this Agreement, the Company shall pay to the City a Franchise Fee equal to 10 percent of the Gross Revenue recorded for all services rendered within the City limits during the preceding calendar quarter. Contractor shall pay the City on or before the 30<sup>th</sup> day of April, July, October and January throughout the duration of this Agreement. If the Franchise Fee is not paid on or before the thirtieth (30<sup>th</sup>) day following the end of the quarter, the Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that quarter. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. Late payment service charges shall not be included in any revenue requirement. The Company agrees that the service charges contemplated by this section reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the Company's services, all in an effort to collect the delinquent Franchise Fees that, together with all other remedies afforded City under this Agreement (including any award of attorney's fees and costs), and in accordance with applicable laws, are intended to compensate City in any collection efforts in the event of Company's default in the payment of Franchise Fees.

##### **B. Tonnage Fee**

The Company shall remit a fee of \$2.64 per ton on all tons collected within the City of Del Mar and disposed of in accordance with this Agreement. The Tonnage Fee shall increase according to the CPI.

#### **4.2 Customer Service**

##### **4.2.1 Office Hours**

Company office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays, and from 8:00 A.M. to 12:00 P.M. on Saturday. A responsible and qualified representative of the Company shall be available during office hours for communication with the public at the office. Normal office hour telephone numbers shall be a toll free call. The Company's telephone system and

number of representatives shall be adequate to handle the volume of calls typically experienced on the busiest days. A live operator shall answer calls placed during office hours within one minute of the initial ring. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day.

Company shall provide the City staff with the phone number or pager number of a live Person who may be reached 24 hours a day.

#### **4.2.2 Missed Pick-ups**

When notified of a missed pick-up, the Company shall Collect the Refuse, Recyclable Materials, and/or Yard Waste the same day, if notified by 12:00 noon, otherwise by 5:00 P.M. of the following day, unless Company can provide documentation that Container was not placed for Collection in a timely manner (evidence may include a report by the driver, provided at time of normal Collection, indicating no Container had been placed out for Collection). A summary of missed pickups shall be submitted to the City monthly.

#### **4.2.3 Complaint Documentation**

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four (24) months and shall be available to the City at all times upon request. A summary of complaints shall be submitted to the City monthly.

The Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by the Company to respond to and remedy complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular Company business hours, have access to the Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

#### **4.2.4 Resolution of Customer Complaints**

Disputes between the Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding, so long as it is consistent with this Agreement.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this section is intended to affect the remedies of third parties against the Company.

#### **4.2.5 Government Liaison**

The Company shall designate in writing a "Government Liaison" who shall be responsible for working with the City and/or the City's designated representative(s) to resolve Customer complaints and assist with waste reduction programs. City shall have the right to approve the Company's choice for a liaison.

Government Liaison shall be the community relations liaison for Del Mar business, residential, and school and municipal issues for continuous and consistent collaboration with City and Customers, including his /her physical presence when requested or appropriate at schools, businesses and business organizations, community events, Sustainability Advisory Board meetings, City Council meetings and workshops, et al.

#### **4.2.6 Service Liaison**

Company shall designate in writing a field supervisor (i.e. route manager) as "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer service related complaints, and strategize with City on an on-going basis regarding more efficient Collection practices. Service Liaison will be available as needed to have daily contact with City staff, and will coordinate with City engineering department to coordinate Collection practices to accommodate City road projects. City shall have the right to approve the Company's choice for a liaison.

#### **4.2.7 Customer Service Liaison**

Company shall designate a customer service representative to which the City can direct Customers that contact the City with Solid Waste service questions. Customer Service Liaison will take responsibility for completing and closing out work orders within the City's designated work order system.

### **4.3 Education and Public Awareness**

#### **4.3.1 Del Mar Zero Waste Program**

Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to significantly exceed AB 939 requirements. Accordingly, the Company agrees to implement a public education plan for the Del Mar Zero Waste Program, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and recycling Solid Waste. The Company will provide and distribute Zero Waste literature in the form of online resources, web-ads, fliers, cards, magnets or other methods acceptable to the City. Any outreach material utilizing paper, provided and distributed by the Company, shall be made from a high percentage post-consumer recycled-content paper and must

be labeled "Printed on Recycled Paper, xx% Post-Consumer Content" on the outreach material. Company shall cooperate fully with City in this regard. Company shall submit the public education plan for approval by the City prior to the effective date of the Agreement. The approved public education plan shall be incorporated as Exhibit 2 into this Agreement.

Company shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs, to all of its Customers. Company shall assist the City in maintaining its Multi-Family mailing list for all Multi-Family dwelling units by reporting changes in Multi-Family Customers and providing addresses of each new or eliminated dwelling unit to the City. All public education materials shall be approved in advance by City. All printed materials shall be printed on high-percentage post-consumer recycled-content paper, and must be labeled "Printed on Recycled Paper, xx% Post-Consumer Content".

In support of the City's Zero Waste goal, and Company will provide the dedicated staff hours necessary to conduct the Public Outreach Efforts necessary to attain this objective. Company will provide, at a minimum, the following staff hours, to implement the key recycling outreach and recognition programs:

Single-Family Recycling Outreach Program: 96 hours per year

Multi-Family Recycling Outreach Program: 96 hours per year

Commercial Recycling Outreach and Recognition Program: 288 hours per year

#### **4.3.2 Implementation and On-going Education Requirements**

Company will provide a minimum of the following public education items to be developed at Company's expense and distributed, after City approval, as indicated below:

**Web-based Program Catalogue** - Company shall be required to develop and provide updated information details for each program to City in an "e-book" or "e-magazine" format, or an alternative format only if approved in advance by City (not PDF), ready for addition to the City and Company websites. Company shall update this based on any program, service or date changes.

**Instructional Packet Accompanying Company-Provided Containers** – An information packet shall be attached to each set of Carts distributed to a Customer. Packet should describe available services, including how to place Carts for Collection, which materials should be placed in each Cart, Collection holidays, and a Customer service phone number.

**Annual Brochures** – At least once per year, a brochure shall be prepared by the Contractor informing Customers of how to use available services, including holiday collection schedules and customer services numbers. Two (2) separate brochures shall be developed: one for Residential Customers, addressing both Single-Family and Multi-



Family service, and one for Commercial Customers. Said brochures shall be prepared and direct-mailed by the Company for each year in which this Agreement is in effect, except that the City will mail brochures to its Single-Family and duplex residential Customers as a part of the mailing of the monthly utility bills.

**Quarterly Notices** – Company is responsible for preparing notices promoting and explaining programs (such as Recycling, Yard Waste, Holiday Tree and Bulky Item Collections, Fuel Reduction Program, Shred Events, Compact Fluorescent Lamp Drop-Off, Battery and Cell Phone Collection, Unwanted pharmaceutical and Sharps Drop-Off, and proper Household Hazardous Waste Disposal) and Collection schedules, including holiday schedules, at least quarterly to all Customers, at the City's request and with City's review and approval of the materials. Notices shall also provide helpful information regarding recycling best practices, and provide information on how well Del Mar is doing in achieving its recycling goals. Notices will be mailed by the City with customer's bills for residential Single-Family and Multi-Family duplex accounts, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company's responsibility.

**Quarterly Del Mar Recycles E-Newsletters** – Company shall create and maintain a database of Residential and Commercial Customers who choose to be notified by e-mail of recycling best practices, and other information to promote the sustainability of programs.

**Corrective Action Notice** – For use in instances where the Customer sets out inappropriate materials.

**Company Representative** - Company shall provide a representative able to visit civic groups, school assemblies, homeowners' associations, building managers, the Del Mar Visitor's Association, and Commercial businesses to promote and explain the Recycling programs, and participate in demonstrations and civic events.

**Notice of Contamination** - "Del Mar Recycles" Notice of Contamination Program. Company is proposing the implementation of a "Del Mar Recycles" Notice of Contamination program to support appropriate participation in the new semi-automated Cart program, and to help ensure that materials are placed in the appropriate Containers. Upon observing contamination, Company drivers will attach a Notice of Contamination tag to the Cart that documents the type of contamination so that Customers can understand how to more appropriately participate in the recycling program in the future. In addition, the tag will provides information on what materials can be recycled and why it is important that everyone in Del Mar participate fully in the recycling program.

**City Approval Required of Education Materials.** All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and

shall not bear the City seal unless otherwise approved by the City. Any outreach material utilizing paper provided and distributed by the Company shall be made from a high percentage post-consumer recycled-content paper and must be labeled "Printed on Recycled Paper, xx% Post-Consumer Content" on the outreach material.

**4.3.3 Multi-Family Outreach and Education.** Company shall specifically target Multi-Family Premises which often have low recycling rates compared to Single-Family and Commercial Customers. Lack of information, confusion about what is recyclable, disinterest among residents and management and limited container enclosure size can contribute to low participation rates. Company will work to overcome these challenges and engage the Multi-Family Customers in Del Mar to participate in recycling.

Company will provide all property managers and residents with Bin/Cart service with Recycling program guidelines, posters to be placed in laundry rooms, refuse/recyclable container enclosures and other community areas at each building, and other outreach materials tailored to Multi-Family Bin/Cart Customer service. Company shall contact each Multi-Family Customer building owner or property manager within 120 days of the start of this Agreement in an effort to implement or optimize recycling programs with an emphasis of working toward Zero Waste, provide educational materials, and to train owner/manager in how to work with tenants to Recycle. Company shall provide each building owner and property manager with welcome packets for owner/manager to provide to each new resident upon move-in; packets will include information on what should be placed in the Recyclable Material Containers.

Company shall prepare and mail a brochure with a high percentage post-consumer recycled content and labeled "Made from Recycled Paper, xx % Post-Consumer Content" at least once per year to each Multi-Family dwelling unit that does not individually receive semi-annual and quarterly notices under Section 4.3.2; brochure shall describe all Solid Waste programs and holiday schedules as they apply to Multi-Family Cart Customers and to Residential Bin Customers.

**Community Site Visits.** Company will visit each Multi-Family Bin Customer's premises where recycling service is not currently being utilized to meet with the property owner or manager for the purpose of establishing a recycling program.

#### **4.3.4 Commercial Outreach and Education**

Company has found that the critical steps to successfully increasing commercial diversion while minimizing contamination are: nurturing management buy-in, conducting on-site evaluations, supporting employee education and providing targeted, ongoing customer communication.

**Printed Communications/Direct Mail.** Any outreach material utilizing paper that is provided and distributed by Company will be made from a high percentage post-consumer recycled-content paper.

**Commercial Customer Site Visits.** Company will visit each Commercial Customer's Premises where recycling service is not currently being utilized to meet with the property owner or manager for the purpose of establishing a recycling program.

**Annual Brochure.** Each year, Company will prepare and mail brochure with information for Commercial Customers on how to use available services, recycling and sustainability tips, holiday collection schedules and customer service contact information.

**Quarterly Notices.** Company is able to provide quarterly billing notices that promote Recycling and provide Collection schedules, including holiday schedules.

**Green Business Certification Program.** Company will work with the City of Del Mar and the Del Mar Village Association to certify and recognize "green" businesses for their commitment to achieving Zero Waste. To participate, businesses must be located in the City and complete an application and self-assessment about Zero Waste practices they have instituted and other sustainable best practices they implement at their site. Company will provide business managers with promotional information, flyers and instructional posters printed on post-consumer recycled paper for their use in implementing a comprehensive waste reduction and recycling program. Company will also provide initial and on-going consultation and support to businesses who request it to ensure long term success of their waste reduction and recycling program. Awards will be presented annually and Company will recognize the awardees through press releases and on the company website.

**Expanding Environmental Education with <http://www.ThinkGreen.com>.** Company shall provide local website which also links to Company's corporate website, <http://www.thinkgreen.com>. ThinkGreen.com invites visitors to reverse the way they think about waste, providing an interactive life-cycle lesson on recyclables and waste, with links to classroom tools for teachers and students, resources, case studies, and information on Company's commitment to sustainability.

#### **4.3.5 Contract Launch Campaign**

In addition to Initial Mailings, Web-Based Programs Catalogue and Instruction all Packets required under Section 4.3.2 above, prior to initiation of services under the new Agreement, Company will conduct a minimum of four residential public meetings, with at least one on a weekend, and present at a Del Mar Village Association meeting/event describing program changes, route changes, dates of program implementation, and other necessary information. Company will schedule two meetings prior to the Cart selection process, and two prior to Cart

delivery. Company will display new Carts to be distributed. Residential workshops shall be conducted at a facility to be determined by City. Meetings shall offer Cart demonstrations, answer questions, educate the community on recycling and resolve any concerns regarding Cart rollout. Meetings will also have content directed towards Multi-Family Bin Customers and to Commercial Bin Customers. Company shall commit 320 hours of staff time to recycling program implementation in the first year.

**Printed Communications/Direct Mail** - Any outreach material utilizing paper that is provided and distributed by Company will be made from a high percentage post-consumer recycled-content paper.

**Dedicated Del Mar Hotline** – Del Mar residents and businesses will have access to a dedicated phone number and e-mail address for any questions or concerns that they have during both the four weeks leading up to Cart selection and four weeks before and four weeks following the Cart rollout process.

#### **4.3.5.1 Single-Family Residential Contract Launch**

**Initial Cart Selection Mailing.** 60 days prior to the start of service, Company will prepare and distribute a return postage paid postcard and information describing the new rate structure and Cart options to all Residential Cart Customers. Residents will have the opportunity to select the size and number of Refuse, Recycling and Yard Waste Carts to be delivered, either by returning the postcard or by using an optional online form.

**New Services Coming Soon! Announcement.** 30-60 days prior to April 1, 2012, Company will mail to each Del Mar resident an initial mailing that describes the NEW and ENHANCED Collection services that will initiate throughout 2012. The mailing will explain the transition from the existing programs to the new programs, and describe program changes, route changes, dates of program implementation and will promote all scheduled community meetings and events. Additionally, the mailing will direct them to Company's webpage for additional information.

News releases will be distributed throughout the Agreement implementation period to encourage local news coverage of the Agreement changes, particularly new program offerings. All news releases will direct customers to the website and customer service for more information.

**Residential Information Packet.** An informational packet will be attached to each set of Carts at the time of distribution. The packet will include:

Residential Collection Brochure and Educational Guide providing a colorful and informative description of all new services, emphasizing "what goes where" guidelines for Recyclable Material, Yard Waste and Refuse Collection. Particular

attention will be given to enhanced recycling, on-call bulky item and electronics pick up, etc.

Waste Reduction Tip Card describing Del Mar's environmental commitment and promoting ways to think green and practice more sustainable living

Customer Service Information including a holiday schedule and customer service contact information

#### **4.3.5.2 Multi-Family Residential Program Launch**

**New Services Coming Soon! Announcement.** 30-60 days prior to April 1, 2012, Company will mail to each Del Mar Multi-Family property manager an initial mailing that describes the NEW and ENHANCED Collection services that will initiate throughout 2012. The mailing will explain the transition from the existing programs to the new programs, and describe program changes, route changes, dates of program implementation and will promote all scheduled community meetings and events. Additionally, the mailing will direct them to Company's webpage for additional information.

**Community Contact.** Company will also contact each Multi-Family building owner or property manager within 60-days of the start of the Agreement in an effort to implement or optimize recycling programs with an emphasis of working toward Zero Waste, provide educational materials and train the owner or manager on how to promote recycling in their community.

#### **4.3.5.3 Commercial Program Launch**

**New Services Coming Soon! announcement.** 30-60 days prior to April 1, 2012, Company will mail to each Del Mar Commercial Customer an initial mailing that describes the NEW and ENHANCED Collection services that will initiate throughout 2012. The mailing will explain the transition from the existing programs to the new programs, and describe program changes, route changes, dates of program implementation and will promote all scheduled community meetings and events. Additionally, the mailing will direct them to Company's webpage for additional information.

**Commercial-Specific Outreach.** Company will also contact each Commercial Customer within 60-days of the start of the Agreement in an effort to implement or optimize recycling programs with an emphasis of working toward Zero Waste, provide educational materials and train the owner or manager on how to promote recycling at their Premises. The Company will educate businesses regarding City and State recycling requirements, and will use good faith efforts to ensure that each business subscribes to recycling service (although it cannot guarantee participation).

#### **4.3.6 Zero Waste Community Events**

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation may include, without cost to City, Collection of Refuse and Recyclable Materials at the event and educational information promoting the goals of the City's efforts of working toward Zero Waste. Company shall not be required to provide free Refuse and Recyclable Material Collection services to more than six events per year as indicated in Section 3.5.5. One or more of the events in Section 3.5.5. may be designated as a Zero Waste Event.

#### **4.3.7 Use of "Del Mar Recycles" Program Name**

The program name "Del Mar Recycles" refers to all Solid Waste management services available to the residents of the City. This name is the exclusive property of the City. Company may use "Del Mar Recycles" to help people identify with the civic pride and environmental good of responsibly managing solid waste. The Company's use of the name does not relieve the Company of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement. The Company's use of the name is not to be construed as constituting an arrangement by the City for the Disposal of Solid Waste, nor to create an agency relationship.

#### **4.3.8 Commercial Outreach Recognition Program**

Green Business Certification Recognition Company will work with City and the Del Mar Village Association to certify and recognize "green" businesses making efforts to become a Zero Waste Business in the community.

To participate, businesses must be located in the City and complete a two page application and self-assessment information about Zero Waste (waste reduction) practices in place and other green policies practiced.

Awards will be presented annually at an event, Council meeting or award ceremony to be mutually agreed upon by City and Company. Company will provide selected companies with an award to be mutually agreed upon by City and Company.

Company will provide business managers with promotional information, flyers and instructional posters made from post-consumer recycled paper and labeled "Made from Recycled Paper, xx% Post-Consumer Content" to implement a comprehensive waste reduction and recycling program, including information on what cannot be placed in the recycling container (i.e.: HHW).

Company shall provide initial and on-going consultation and support to Commercial Customers who request it to ensure long term success of their business' waste reduction and recycling program.

#### **4.3.9 Short-Term Vacation Rental Outreach**

Company shall tailor an outreach program specifically to Del Mar's vacation rentals. Company acknowledges that vacation rentals represent a transient occupancy that are difficult to reach by conventional methods. Company will compile a list of vacation rentals and shall provide information packets to landlords on the proper use of the Refuse and Recyclable Material Containers and regarding what may be recycled in the City's recycling programs.

#### **4.4 Waste Generation/Characterization Studies**

Contractor acknowledges that City desires to perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939. Contractor agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed, by Customer type (Single Family, Multi-Family, Commercial), to satisfy the requirements of AB 939. Contractor will at its sole expense conduct such a waste generation and characterization study upon request of City, but not more than once every two years.

## **ARTICLE 5**

### **COMPANY COMPENSATION AND RATES**

#### **5.1 General**

The Company Compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all services, labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required and reasonably anticipated by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by the City from time-to-time.

#### **5.2 Initial Rates**

The Company Compensation from April 1, 2012 through June 30, 2013 shall not exceed those set forth in Exhibit 3, unless amended by a written amendment to this Agreement entered into by and between the City and the Company. Unless and until the maximum rates set forth on Exhibit 3 are adjusted, the Company will provide the services required by this Agreement, receiving no more than the Company Compensation authorized by Exhibit 3, except as provided herein and in Section 5.3.

### **5.3 Schedule of Future Adjustments**

Beginning with the Rate Year commencing on July 1, 2013, and for all subsequent Rate Years, the Company may request an annual adjustment to the Company Compensation for all rate categories shown in Exhibit 3, as adjusted in accordance with this Section 5.3. The Company shall submit its request in writing, to be received by the City in Person or via certified mail, at least ninety (90) days prior to the start of the new Rate Year based on the method of adjustment described in Section 5.4. Failure to submit a written request at least ninety (90) days prior to the start of the new Rate Year shall result in the Company waiving the right to request such an increase for the subsequent year.

The City may, at its discretion, decrease the rates in accordance with Section 5.4 in the event that the rate adjustment formula produces a decline. If any rates would decline based upon Section 5.4 calculations and a rate decrease is not implemented, the subsequent rate adjustment shall be based upon the average changes in indices since previous rate adjustment instead of the average change over the prior year.

The rate adjustments shall apply to the Contractor Compensation rates included in Exhibit 3.

### **5.4 Method of Adjustments**

#### **5.4.1 General**

For Rate Years beginning July 1, 2013, Company may request an adjustment to Company Compensation for all rate categories included in Exhibit 3 according to the method described below and the formulas shown in Exhibit 4, subject to review and approval of City. All future adjustments are to be effective July 1 of the same year.

### **5.5 Extraordinary Adjustments**

Company may request an adjustment to the Company Compensation at reasonable times other than that required in Section 5.3 to recover increased costs arising from extraordinary changes in the cost of providing service under this Agreement. Such changes may include, but are not limited to, changes in service required by the City, revisions to the Municipal Code that affect the performance of services, the City's designation of a Solid Waste Facility under Section 3.9, increases in cost to deliver material (e.g., tipping fees) Collected under this Agreement to Facilities not owned or operated by Company and which Company is required by City or otherwise under this Agreement to use, or additional costs imposed by or arising from actions by Federal, State or local regulatory agencies, including additional diversion requirements. Company is expected to comply with SDAPCD Rules and the Air Resource Board's existing emission standards for Refuse removal vehicles with no additional compensation.

For each request for an extraordinary adjustment to the Company Compensation, Company shall prepare a schedule documenting the extraordinary costs. Such request shall be



prepared in a form acceptable to City with support for assumptions made by Company in preparing the estimate. City shall review the Company's request and in City's sole judgment and absolute discretion make the final determination as to whether an adjustment to the Compensation will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. The disposal component of the rate is considered to be a pass-through cost, and annual adjustments to the landfill disposal component of the rate as governed by the City's RSWA agreement are permitted as indicated in Exhibit 4 of the Agreement. Company acknowledges that any rate adjustment approved by the City is contingent upon the Proposition 218 process.

#### **5.5.1 Reimbursement for City Costs Incurred Due to Company Extraordinary Rate Requests**

The Company acknowledges that any extraordinary rate adjustment outside of the rate increase mechanism subject to the City's Proposition 218 notification process will cause the City to incur material costs in conducting an additional Proposition 218 process, and making any additional changes to the City billing system. Company agrees to reimburse City of actual direct and indirect City costs incurred in implementing an Extraordinary Rate Request.

## **ARTICLE 6**

### **REVIEW OF SERVICES AND PERFORMANCE**

#### **6.1 Performance Hearing**

The City may hold a public hearing on or about the two year anniversary of the start of this Agreement, and annually thereafter, at which time the Company shall be present and shall participate, to review the services provided hereunder, source reduction, processing and other diversion services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection & Diversion services, source reduction and Recycling and Disposal system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from the City of a performance review hearing, the Company shall, at a minimum, submit a report to the City indicating the following:

- a) Recommended changes and/or new services to improve the City's ability to significantly exceed the goals of AB 939 and to contain costs and minimize impacts on rates.

- b) Any specific plans for provision of changed or new services by the Company.

The reports required by this Agreement regarding Customer complaints shall be used as one basis for review. The Company may submit other relevant performance information and reports for consideration. The City may request the Company to submit specific information for the hearing. In addition, any Customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the performance review hearing shall include, but shall not be limited to, services provided, route audit results, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for significantly exceeding AB 939's goals, regulatory constraints, and the Company's performance. The City and the Company may each select additional topics for discussion at any performance review hearing.

Not later than sixty (60) days after the conclusion of each performance review hearing, the City may issue a report. As a result of the review, the City may require the Company to provide expanded or new services within a reasonable time and for reasonable rates and compensation and the City may direct or take corrective actions for any performance inadequacies.

## **6.2 Performance Satisfaction Survey**

If requested by the City, Company will create and conduct a survey at Company's expense in preparation for any performance review meeting held pursuant to Section 6.1. City shall notify Contractor of its desire for such a survey at least 90 days in advance of the performance review meeting. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Contractor. The Survey will be distributed to a minimum of ten percent (10%) of the Residential Customers and ten percent (10%) of the Commercial Customers, selected at random. City may instruct Contractor to send out separate Single-Family and Multi-Family/Commercial surveys. Contractor shall obtain City's approval of each survey's content, format, and mailing list prior to its distribution. City may choose to write or re-write the survey.

City may require that Contractor have Customer responses to the survey returned directly to City. The survey results shall be made available to the City thirty (30) days prior to the Solid Waste & Diversion Services and Performance Review Meeting.

## ARTICLE 7

### RECORDS, REPORTS AND INFORMATION REQUIREMENTS

#### 7.1 General

The Company shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, the Company agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste program management needs of the City, in particular, reporting obligations imposed by AB 939. To this extent, such requirements set out in this and other Articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of the City, the records and reports to be maintained and provided by the Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

#### 7.2 Records

##### 7.2.1 General

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the City business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. All records shall be maintained for five (5) years, and the last five (5) years of records shall be maintained for an additional three (3) years after the expiration of this Agreement.

The Company agrees that the records related to this Agreement of any and all companies conducting operations addressed in the Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize any of the records described in this section for any purpose whatsoever. Failure to provide said records may be considered a material breach of this Agreement.

##### 7.2.2 Financial Records

Financial records shall be maintained and expense and revenue information for the City shall be segregated from other areas served by the Company.

### **7.2.3 Solid Waste Service Records**

Records shall be maintained by the Company for the City relating to:

- a) Customer services and billing (for services billed by Company);
- b) Routes;
- c) Facilities, equipment and personnel used;
- d) Complaints;
- e) Missed pickups;
- f) Number of Refuse, Recycling, and Yard waste Containers, both Residential and Commercial;
- g) Tons Collected, processed, diverted, and disposed by type of service, waste stream and Customer; and,
- h) Weight of each Recyclable Material recovered at a MRF, if one is utilized.

### **7.2.4 CERCLA Defense Records**

The City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports required in Section 7.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. Company shall continue to retain records required to be retained under the previous agreement in accordance with Section 7.2.4 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement. The Company agrees to notify the City's Risk Manager and the City Attorney at least 90 days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

### **7.2.5 Other Programs' Records**

Records for other programs shall be tailored to specific needs. In general, they shall include:

- a) Plans, tasks, and milestones; and,
- b) Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

### **7.2.6 Audits**

The City retains the right to audit Company records regarding compliance with terms of this Agreement, Customer service levels, Single-Family and Multi-Family Residential and Commercial accounts and service levels, franchise fee and business license payments, Gross Receipts, tonnage, disposal and diversion Facilities, verification of

Diversion rate, and other data related to Company's performance under this Agreement that the City may deem appropriate. Contractor shall cooperate fully with any information requests.

City has the option to audit the Company's operations, services, and Billings provided under this Agreement. Should such an audit disclose that two percent (2%) or more of the Customers' actual service levels based on field inspections differ from the service levels recorded at the City for the period under review due to the Company's failure to properly and promptly notify the City of service level or other Customer changes, Company shall pay its reasonable costs of the audit.

#### **7.2.7 Payments and Refunds**

Should an audit by the City disclose that the Company Compensation payable to the Company was overpaid or underpaid or that Customers were overcharged or undercharged, due to the Company's failure to properly and promptly notify the City of service level or other Customer changes or for any other reason, for the period under review, in addition to any other remedies which may be available to City, the Company shall pay to the City any overpayment of Company Compensation and/or refund the Customers any overcharges directly, or the City shall pay to the Company any underpayment of Company Compensation and/or bill the Customers for any undercharges directly, as the case may be. Any refunds to shall be due and payable (30) days following the date of the audit.

### **7.3 Reports**

#### **7.3.1 Report Formats and Schedule**

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- a) Determine and set rates and evaluate the efficiency of operations;
- b) Evaluate past and expected progress towards significantly exceeding AB939 goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report requires approval by the City. The Company agrees to submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. The Company will provide a certification statement, under penalty of perjury, by an authorized Company official, that the report being submitted is true and correct.

Monthly reports shall be submitted within twenty (20) calendar days after the end of each month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 7.3.3 (a), shall be sent to the City Manager within 5 days of request. Annual reports shall be submitted before January 31 following the reporting year.

All reports shall be submitted electronically to the City, as directed, and to:

City of Del Mar City Manager (or designated representative)  
1050 Camino del Mar  
Del Mar, CA 92014

### **7.3.2 Monthly Reports**

The information listed shall be the minimum reported:

- a) Solid Waste Collected by the Company for each month, sorted by type of Solid Waste (Refuse, Recycling, Yard Waste, Food Waste) and type of Customer (Residential Cart, Bin and Commercial Cart Service, Rolloff) in tons, and the Facilities where the tons were processed or disposed. Contamination rates shall be reported for Recyclable Material Collection. Bulky Waste items shall be separately reported.
- b) Materials Recovered. Statement showing kinds of material and quantity sold (in tons).
- c) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for the City, as appropriate.
- d) Warning notices issued for contaminated Recyclable Materials and Yard Waste Containers.
- e) Number of Commercial Food Waste Diversion Program Participants, if applicable.
- f) Summary of missed pickups per Section 4.2.2.
- g) Summary of complaints per Section 4.2.3.

### **7.3.3 Quarterly Reports**

Report should contain at a minimum the information required in the monthly report and the following:

- a) Complaint summary for the quarter summarized by nature of complaints on a compatible computer disc.
- b) Copies of promotional and public education materials sent during the quarter.
- c) Other information or reports that the City may reasonably request or require.
- d) Tons Collected from City Facilities.
- e) List of Commercial Customers actively participating in Recycling programs with Company, and their service levels.

#### **7.3.4 Annual Report**

The Annual Report is to be essentially in the form and content of the monthly and quarterly reports combined, but shall also include:

- a) A complete inventory of Collection equipment used to provide all services (such as vehicles and Containers by size and waste stream type Container is used for).
- b) A summary of the number of Bins by size and service level, Cart counts by size (32-, 64-, or 96-gallon) and type of service (Refuse, Recycling, Yard Waste, and Residential versus Commercial), and Rolloff Box pulls per month by material type.
- c) Environmental Litigation Defense records required under Section 7.2.4.
- d) General information about the Company, including a list of officers and members of its board of directors, most recent annual report of Waste Management, Inc., and of other entities that may perform services under this Agreement, as the City may request.
- e) Copy of Hazardous Waste diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently collected, but diverted from landfilling.
- f) Number of routes and route hours per day by type of service.

#### **7.3.5 Financial Report**

The City may, at the City's option, request the Company's financial reports/statements for the most recently completed fiscal year to the extent reasonably required to evaluate Company's performance or obligations under this Agreement, including a performance audit, billing audit, or verification of other information required under this Agreement. Financial statements may, to the extent required, include a supplemental combining schedule showing the Company's results of operations, separated from others included in such financial statements. The cost of preparing financial information requested by the City will be borne by the Company.

#### **7.4 Adverse Information**

**A. Reporting Adverse Information.** The Company shall provide the City two copies (one to the City Manager and one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the Company from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court. Copies shall be submitted to the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine

correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

- B. Failure to Report.** The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 10 and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

#### **7.5 Right to Inspect Records**

The City shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the Company's performance provided for in this Agreement. Failure to make such records readily available shall be deemed a material breach of this Agreement.

## **ARTICLE 8**

### **INDEMNIFICATION, INSURANCE AND BONDS**

#### **8.1 Indemnification**

The Company hereby agrees to and shall indemnify and hold harmless the City, its elected and appointed boards, commissions, officers, employees, and agents (collectively, Indemnitees) from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) including attorney's fees arising or resulting from or caused by (1) the negligence or willful misconduct of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, Companies and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity shall not extend to matters resulting from the Indemnitees' sole negligence, willful misconduct or breach of this Agreement. The Company further agrees to and shall, upon demand of the City, at the Company's



sole cost and expense, defend (with attorneys acceptable to the City) the Indemnitees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events.

The Company, upon demand of the City, made by and through the City Attorney, shall protect the City and appear in and defend the Indemnitees, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material" or the limits of the City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or State laws to provide Solid Waste services in the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

The Company's duty to indemnify and defend from the aforementioned events arising during the Term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

## **8.2 Hazardous Substances Indemnification**

The Company shall defend with counsel reasonably acceptable to the City, indemnify, protect and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, Damages) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising out of or resulting from any repair, cleanup, detoxification, or preparation and implementation of any removal, remedial, response, closure, corrective action or other plan (regardless of whether undertaken due to governmental action), concerning the release or threatened release of any hazardous substance or Hazardous or municipal Solid Waste at any place where Hazardous or Solid Waste is or has been transported, transferred, processed, stored, disposed or has otherwise come to be located by Company pursuant to the Contract, which may result in a release of Hazardous Waste or hazardous substance into the environment. The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability

Act, CERCLA, 42 USC. §9607(e), Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 *et seq.*, and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The liability of the Company pursuant to this Section 8.2 is not limited to the limits of the policies of insurance provided pursuant to Section 8.4..

The foregoing indemnity is for the exclusive benefit of the Indemnitees and in no event shall such indemnity inure to the benefit of any third party. The foregoing indemnity shall not apply with respect to: (1) any Hazardous Waste or hazardous substance generated by the City or its agents and delivered by the City or its agents; (2) any materials delivered by Company to a disposal facility or processing facility designated by the City that is not owned or operated by Company unless such materials was known by Company to be Hazardous Waste or hazardous substance and illegal for delivery to disposal site or process facility, or (3) the disposal or release of hazardous substances or Hazardous Waste, which disposal or release has resulted from the sole negligence or willful misconduct of the City or its agents.

### **8.3 AB 939 Indemnification**

The Company shall indemnify and hold harmless the City from and against all fines and/or penalties imposed by CalRecycle if the source reduction and Recycling goals, or any other requirement of AB 939, are not met by the City with respect to the waste stream Collected under this Agreement. Company's indemnification of the City is subject to all of the following restrictions:

- a. The Company's obligation to indemnify the City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to Section 41000 *et. seq.* of the Public Resources Code.
- b. No payment required under the company's obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was attributable to the Company's breach of or noncompliance with an express obligation or requirement. Further, the Company shall not be liable under the indemnity obligation to the extent that the company's breach or non-compliance resulted from City's action or failure to act, determined as a result of judicial review, hearing or appeal to CalRecycle.

### **8.4 Insurance**

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision. The insurance required is in addition to and separate from any other obligations contained in the contract.

**A. Minimum Scope of Insurance.** Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 1996 or later).

2. The most recent editions of Insurance Services Office form number CA 00 01 (or equivalent) covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

**B. Minimum Limits of Insurance.** The Company shall maintain in force for the term of this Agreement limits no less than:

1. General Liability: Ten Million Dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) limit per occurrence, for bodily injury, personal injury and property damage per year. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.

**C. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of such deductibles or self-insured retentions.

**D. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
  - a) The City of Del Mar and its officers and employees are to be named as additional insureds by policy endorsement as respects: liability arising out of activities performed by or on behalf of the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no additional limitations on the scope of protection afforded to the City of Del Mar, its elective and appointive boards, commissions, officials, employees, agents or volunteers unless specifically agreed to in writing by the City.
  - b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees,

agents or volunteers shall be excess of the Company's insurance and shall not contribute with it.

- c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
- d) Coverage shall state that the Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by the Company for the City

- 2. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**E. Acceptability of Insurers.** The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

**F. Verification of Coverage.** The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before work commences. The City reserves the right to review complete, certified copies of all required insurance policies, at any time. The City will attempt to maximize confidentiality of the policies to the extent permitted by law.

Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverage throughout the Term.

**G. Companies and Subcontractors.** The Company shall include all other companies and subcontractors providing physical services in the City directly related to Company's performance hereunder as insureds under its policies or shall furnish separate certificates and endorsements for each other company and subcontractor. All coverages for companies and subcontractors shall be subject to all of the requirements stated herein.

## **H. Required Notice**

### **1. Workers' Compensation Policy**

"Thirty (30) days prior written notice by certified mail (10 days in the event of cancellation for non-payment), return receipt requested shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager  
City of Del Mar  
1050 Camino del Mar  
Del Mar, CA 92014

### **2. Public Liability policy:**

"Thirty (30) days prior written notice (10 days in the event of cancellation for non-payment) shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager  
City of Del Mar  
1050 Camino del Mar  
Del Mar, CA 92014

- a) "The City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."
- b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- c) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Company's liability as set forth in the policy beyond the amount shown or to which the Company would have been liable if only one party had been named as an insured."

## **I. Other Insurance Requirements**

1. Company will establish an insurance policy repository and maintain copies of insurance policies required pursuant to this Agreement for 10 (ten) years after the end of the term during which Collection services are to be provided pursuant to this Agreement. Company shall notify City's risk manager and City attorney before destroying copies of such policies. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.
2. In the event any services are delegated to another company or subcontractor, the Company shall require such company or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the other company or subcontractor's employees engaged in the work in accordance with this section. The liability insurance required by this section shall cover all company or subcontractors or the company or subcontractor must furnish evidence of insurance that meets all of the requirements of this section.
3. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against the Company or any company or subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

If the Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Company's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due the Company.

## **8.5 Performance Bond**

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer with a Bests Rating of not less than A-, in the amount of \$200,000 (Two Hundred Thousand Dollars) similar to the form provided in Exhibit 6, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional, continuously renewed, and remain in force during the entire term of the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

**8.6 Forfeiture of Performance Bond**

In the event the Company shall for any reason become unable to, or fail in any way to, perform as required by this Contract, the City may declare a portion or all of the performance bond which is necessary to recompense and make whole the City, forfeited to the City. Upon partial or full forfeiture of the performance bond, the Company shall restore the performance bond to its face amount within 30 days of the City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of contract.

**8.7 Performance Bond Beyond Service Term**

Some Agreement requirements extend beyond the Term and other requirements, such as Diversion rates per Section 3.7.1, will not be substantiated until after the final service date. Therefore, the Company shall not terminate the performance bond, and will renew it to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond will automatically expire at the end of 36 months after the end of the Term unless City has notified Company in writing as to a specific contractual area of concern yet to be resolved, instructing Company to retain bond. Neither permission from the City to discontinue holding this bond, nor permitted expiration after 36 months, shall relieve Contractor of payments to the City that may be due, or may become due.

**8.8 Property Damage**

Any physical damage caused by the negligent or willful acts or omissions of employees of Company to public or private property shall be repaired or replaced by Company at Company's sole expense.

**8.9 Pavement Damage**

Company shall be responsible for damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear. Company understands that the exercise of this Franchise may involve operation of its Collection vehicles over private roads and streets. Disputes between Company and its service recipients as to damage to private pavement are civil matters and complaints of damage will be referred to Company as a matter within its sole responsibility and as a matter within the scope of Section 8.1.

## **ARTICLE 9**

### **CITY'S RIGHT TO PERFORM SERVICE**

**9.1 General**

In addition to, but not in lieu of, any other rights or remedies City might have under this Agreement, at law or in equity, in the event that the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of

any or all Solid Waste that it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours after receiving written notice from City regarding such failure, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, after 24 hours' written notice to the Company, and during the period of such emergency as determined by the City, as hereinafter set forth, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to the Company; and/or (2) to take temporary possession of certain Company land, equipment and other property used or useful in the Collection and transportation of Solid Waste under this Agreement, and to use such property to Collect and transport any Solid Waste generated within the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement. The City shall not be entitled to take possession of any of Company equipment or other property to the extent that possession thereof by the City would prevent Company's ability to conduct its operations in areas outside the Franchise area. The City's right to so perform services otherwise required of Company hereunder and to so take possession of such portion of Company's equipment and other property shall continue only for the period of time during which Company fails, refuses or is unable to collect, transport and dispose of Solid Waste which it is required by this Agreement to so collect, transport and dispose, and shall cease at such time as Company is ready and able to perform its obligations hereunder.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste must be given to the Company in writing pursuant to Section 11.13.

Subject to the above, the Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.
- C. The City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if the City so desires, employees previously or then employed by the Company. The Company further agrees, if the City so requests, to furnish the City the services of any or all management or office Personnel employed by the Company whose services are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the billing and Collection of fees for these services.

The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and Facilities while in its possession.



If the interruption or discontinuance in service is caused by any of the reasons listed in Section 10.5, the City shall pay to the Company the reasonable rental value of the equipment and Facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

## **9.2 Billing and Compensation to the City During the City's Possession**

During such time that the City is providing Solid Waste services, as above provided, the City shall bill and collect payment from all users of the above-mentioned services as described in Section 4.1. The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of the Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

## **9.3 City's Right to Relinquish Possession**

It is further mutually agreed that the City may, with 24 hours' written notice to Company, at its discretion relinquish possession of any or all of the above-mentioned property to the Company and there upon demand that the Company resume the Solid Waste services as provided in this Agreement, whereupon the Company shall be bound to resume the same, except as otherwise provided in this Agreement.

## **9.4 City's Possession Not A Taking**

Except as otherwise expressly provided in this Article, the City's exercise of its rights under this Article: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 8., which are meant to extend to circumstances arising under this section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

## **9.5 Duration of the City's Possession**

The City's right pursuant to this Article to retain temporary possession of the Company's Facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the Company's property or equipment

and/or continue its use for any period of time and may at any time with 24 hours' notice, in its sole discretion, relinquish possession to the Company.

## ARTICLE 10

### DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

#### 10.1 Events of Default

All provisions of this Agreement to be performed by the Company are considered material. Each of the following shall constitute an event of default.

**A. Fraud or Deceit or Misrepresentation.** If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes an intentional misrepresentation regarding material information to the City.

**B. Insolvency or Bankruptcy.** If the Company becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.

**C. Failure to Maintain Coverage.** If the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.

**D. Violations of Regulation.** If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company or City relative to the performance of this Agreement, provided that the Company may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred until a final decision adverse to the Company is entered.

**E. Failure to Perform.** If the Company ceases to provide Collection, processing or Recycling services as required under this Agreement over all or a substantial portion of its Franchise area for a period of two (2) consecutive days or more, unless excused per Section 10.5.

**F. Failure to Pay.** If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand, with required information, reports, and/or records in a timely manner as provided for in the Agreement.

**G. Acts or Omissions.** Any other act or omission by the Company related to performance under this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, any Environmental Law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Company should fail to commence to correct

or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

**H. False or Misleading Statements.** Any representation or disclosure made to the City by the Company in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

**I. Attachment.** There is a seizure of, attachment of, or levy on, the operating equipment of the Company, including without limits its equipment, maintenance or office Facilities, or any part thereof, which make Company's performance hereunder impracticable.

**J. Failure to Provide Assurance of Performance.** If the Company fails to provide reasonable assurances of performance as required under Section 10.6.

The Company shall be given seventy-two (72) hours from notification by the City to cure any default arising under subsections C, D, E, F, G, H, I and J provided, however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the Company has committed the same or similar breach within a six-month period. City is not obligated to provide an opportunity to cure a default arising under the other subsections.

## **10.2 Criminal Activity of Company**

Should any of the Company's officers, directors or managerial employees with oversight over this Agreement be found guilty of embezzlement, extortion, racketeering, false claims, false statements, forgery or any other similar felony involving business dishonesty, the Company shall either terminate from employment or remove from office the convicted employee, officer or director and eliminate the ability of such employee, officer or director to manage, supervise or influence the decisions or actions of the Company or any parent company of the Company. If the Company fails to comply with the foregoing obligation, the Company may be considered in breach of this Agreement and subject to the City's remedies for default as set forth under this Agreement.

## **10.3 Right to Terminate Upon Default**

Upon an uncured default or breach of the Agreement by the Company, the City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the City may have.

By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality service, the time required to effect alternative service, and the rights granted by the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.

#### **10.4 Liquidated Damages**

**A. General.** The City finds, and the Company agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a breach by the Company of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) the services provided under this Agreement might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

**B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The parties further acknowledge that consistent, reliable Solid Waste Collection service is of utmost importance to the City and that the City has considered and relied on the Company's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 10, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Company \_\_\_\_\_ City \_\_\_\_\_  
Initial Here: \_\_\_\_\_ Initial Here: \_\_\_\_\_

The Company agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

1. **Collection Reliability**

- a) For each failure to commence service to a new Customer account within seven days of receipt of request which exceeds five (5) such failures annually:  
\$150.00.
- b) For each failure to deliver Bins, Carts, or Containers on the day scheduled for delivery that exceeds five (5) such failures annually:  
\$ 50.00.
- c) For each failure to correct a missed pickup within the timing allotted for correction per Section 4.2.2, and for each additional business day in which the Collection is not made up, which exceeds ten (10) such failures annually:  
\$50.00/day.
- d) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days:  
\$150.00.

2. **Collection Quality**

- a) For each occurrence of damage to private property which exceeds five (5) such occurrences annually:  
\$250.00.
- b) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright which exceeds ten (10) such occurrences annually:  
\$150.00.
- c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within three (3) hours from initial discovery or reporting that exceeds ten (10) such failures annually:  
\$150.00.
- d) For each occurrence of Collecting Solid Waste during unauthorized hours (See Section 3.9.1.) which exceed five (5) such occurrences annually:  
\$250.00
- e) For each failure to clean or replace Commercial Containers in accordance with Section 3.7.5 of this Agreement which exceeds ten (10) such failures annually:

\$150.00

- f) For each failure to deliver a Rolloff Bin or temporary Bin within 48 hours of a Customer's request:

\$ 50.00

3. **Customer Responsiveness**

- a) For each failure to initially respond to a Customer complaint within one (1) business day which exceeds three (3) such failures annually, and for each additional day in which the complaint is not addressed:

\$250.00

- b) For each failure to process Customer complaints to the City as required by Article 4 herein:

\$250.00

- c) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within one business day of request from City or Customers:

\$150.00

- d) For each failure to process a claim for damages within thirty (30) days from the date submitted to Company.

\$100.00

- e) For each additional thirty (30) day increment of time in which Company has failed to resolve a claim for damages within thirty (30) days from the claim date.

\$100.00

4. **Timeliness of Submissions to the City**

Any report shall be considered late until such time as a correct and complete report is received by the City. For each calendar day a report is late, the daily liquidated damage amount shall be:

- a) Monthly or Quarterly Reports: \$100 per day

- b) Annual Reports: \$350 per day

5. **Accuracy of Billing Information**

- a) For each failure to notify the City within 72 hours of Company being notified of a Customer or service change so that Customer billing records may be updated:

\$100/occurrence

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan.

\$100 per day

7. **Diversion Efforts**

- a) For every Yard Waste or Recyclable Material Cart Collected as Refuse without issuing a red tag per Section 3.4:

\$25 per Cart

8. **Cooperation with Service Provider Transition**

- a) For each day routing information requested by City in accordance with Section 11.8 is received after City-established due dates, both for preparation of a request for proposals and for new service provider's implementation of service:

\$1,000/day

- b) For each day delivery of keys, access codes, remote controls, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new service provider servicing Customers with access issues, as described in Section 11.8:

\$1,000/day

The City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints.

Prior to assessing liquidated damages, the City shall give the Company notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. The Company may review (and make copies at its own expense) all non-confidential information in the possession of the City relating to incident(s)/non-performance. The Company may, within ten (10) days after receiving the notice, request a meeting with the City Manager or his or her designee. The Company may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The City Manager or his or her designee will provide the Company with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager or his designee, acting reasonably and in good faith, shall be final.

**C. Amount.** The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

**D. Timing of Payment.** The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withhold amount due from the next monthly payment to Company, may proceed against the Bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

## **10.5 Excuse from Performance**

### **10.5.1 Force Majeure**

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, terrorism, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

### **10.5.2 Labor Unrest**

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Company's employees or directed at the Company will be considered an excuse from performance to the extent that Company meets the terms of this Section 10.5. Notwithstanding other remedies to which the City shall be entitled under this Agreement in event of failure to perform, in the event of Company's failure to perform, or anticipated failure to perform, due to labor unrest, Company shall:

- 1) Provide a contingency plan to the City within ninety (90) days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval and Contractor shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction. Plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and detailed communications procedures to be used.
- 2) Notify City Manager sixty (60) days prior to the expiration of its drivers' labor agreement (if any).
- 3) Meet the requirements agreed to in the contingency plan.
- 4) Meet requirements of 10.5.3 below.

Contractor shall meet all requirements under this section or City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 10.1, 10.3 and 10.4, in



which case Contractor is not excused from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

#### **10.5.3 Procedures In Event of Excused Performance**

The party claiming excuse from performance under Section 10.5.1 or 10.5.2 shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this section.

Throughout service disruption, Company shall:

- 1) Provide City with a minimum of daily service updates.
- 2) Shall notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, Company shall update its website and shall provide ongoing updates to City for use on its website, and a "reverse 911" contact method to reach all possible Customers. Should enhanced contact technologies become available, Company shall use such methods upon approval from City.

The interruption or discontinuance of the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company is excused from performing its obligations hereunder for any of the causes listed in this section for a period of thirty (30) days or more, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 and this Article 11 will apply.

#### **10.6 Assurance of Performance**

The City may, at its option and in addition to all other remedies it may have, demand from the Company reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City may require. If the Company fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the City, such failure or refusal shall be an event of default.

## **ARTICLE 11**

### **OTHER AGREEMENTS OF THE PARTIES**

#### **11.1 Relationship of Parties**

The parties intend that the Company shall perform the services required by this Agreement as an independent Company engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or

agent or Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. The Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors, Affiliates and agents. Neither the Company nor its officers, employees, Companies, subcontractors, Affiliates and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

#### **11.2 Compliance with Law**

In providing the services required under this Agreement, the Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. The City shall comply with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

#### **11.3 Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

#### **11.4 Jurisdiction**

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the parties agree that this Agreement is made in and will be performed in San Diego County.

#### **11.5 Assignment**

Except as may be provided for in Article 10 (the City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section when used in reference to the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization,

stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of the Company; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of the Company's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership, or change of control of the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified herein based on (1) the Company's experience, skill and reputation for conducting its operations in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (2) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

If the Company requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion, except for an assignment to an Affiliate, which the city shall deny or approve in its reasonable discretion. No request by the Company for consent to an assignment need be considered by the City unless and until the Company has met the following requirements:

- a) Contractor shall pay City its reasonable expenses for attorney's and/or consultant's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. An advance payment towards expenses may be requested by City prior to City consideration of any assignment request and Contractor shall be responsible to pay all costs incurred by City in considering a request for assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the assignment.
- b) The Company shall pay a transfer fee to the City equal to 1% of the annual revenue for the most recent 12 months prior to the effective date of the change of ownership multiplied by the number of remaining years, or fraction thereof, under this Agreement. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of the Company;
- c) The proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3)

operating years. If assignment is to an Affiliate and Affiliate provides a performance guarantee from the parent company, the parent company's audited financial statements may be provided;

- d) A proforma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such proforma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Contractor's operations.
- e) Except for an assignment to an Affiliate of the Company, the proposed assignee must furnish the City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the sale of operations conducted by the Company under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, State or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with State, federal or local Environmental Laws and that the assignee has provided the City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, State and local laws regulating the Collection and Disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall the City be obliged to consider any proposed assignment by the City if the Company is in default at any time during the period of consideration.

#### **11.6 Contracting or Subcontracting**

The Company shall not engage any companies or subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the City. Transport from the transfer station to processing or disposal facilities is excluded from this paragraph.

#### **11.7 Binding on Assigns**

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the parties.

#### **11.8 Transition to the Next Company**

If the transition of services to another company occurs through expiration of term, default by Company and termination by City, or otherwise (other than breach by City), the Company will cooperate with the City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, the Company providing

detailed route lists, billing and service-level information and other operating records needed to service all properties covered by this Agreement. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Contractor shall be responsible for coordinating transfer immediately after Contractor's final pickups, so as not to disrupt service. Contractor shall provide City with detailed route sheets containing service names and addresses, Billing names and addresses, monthly rate and service levels (number and size of Containers and pickup days) at least 90 days prior to the transition date, and provide an updated list two weeks before the transition and a final list of changes the day before the transition. Contractor shall provide means of access to the new service provider at least one full Working Day prior to the first day of Collection by another party, and always within sufficient time so as not to impede in any way the new service provider from easily servicing all Containers.

Company shall cooperate in good faith with City and new service provider in scheduling exchanges of Company containers with containers provided by the new service provider so as to assure that customers neither need to find storage for two sets of containers nor go without a container for an inconvenient length of time.

#### **11.9 Parties in Interest**

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the parties to it and their representatives, successors and permitted assigns.

#### **11.10 Waiver**

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any moneys that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

#### **11.11 The Company's Investigation**

The Company has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

#### **11.12 Condemnation**

The City fully reserves the rights to acquire the Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of

eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 9.

**11.13 Notice**

All notices, demands, requests, proposals, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the parties at the address below, sent overnight through a national courier, or , addressed as follows:

If to the City:           City Manager  
                                  City of Del Mar  
                                  1050 Camino del Mar  
                                  Del Mar, CA 92014

And to:

If to the Company:       \_\_\_\_\_

                                  \_\_\_\_\_

                                  \_\_\_\_\_

Copy to:

                                  Coast Waste Management, Inc.  
                                  Attn. Western Group General Counsel  
                                  7025 North Scottsdale Road, Suite200  
                                  Scottsdale, AZ 85253

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.

Notice shall be deemed given on the day it is personally delivered, or, if sent via courier the day received, or three business days from the date it is deposited in the mail.

#### **11.14 Representatives of the Parties**

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them. The Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Company in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Company. The City may rely upon action taken by such designated representative as actions of the Company unless they are outside the scope of the authority delegated to him/her by the Company as communicated to the City.

#### **11.15 City Free to Negotiate with Third Parties**

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste at any time prior to the expiration of the Term. Without limiting the generality of the foregoing, the City may solicit proposals from the Company and from third parties for the provision of Collection services, Disposal services, Recycling services, Yard Waste services and processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination under Section 10 of this Agreement.

#### **11.16 Compliance with Municipal Code**

The Company shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement.

#### **11.17 Privacy**

The Company shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude the Company from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939. This provision shall not apply to reports or records provided to City pursuant to this Agreement so long as City maintains reports or records with Customer identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Company.

**11.18 Compliance with Immigration Laws.**

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

**11.19 Proprietary Information, Public Records**

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. As provided herein, the Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 11.18 (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

**11.20 Guarantee of Contractor's Performance**

Pursuant to a guarantee in substantially the form attached as Exhibit 5, a corporation which owns all of the issued and outstanding common stock of Company has agreed to guarantee the Company's performance of this Agreement. The Guarantee is being provided concurrently with the Company's execution of this Agreement.

**11.21 Attorney's Fees**

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

## **ARTICLE 12**

### **MISCELLANEOUS AGREEMENTS**

**12.1 Entire Agreement**

This Agreement, including the Exhibits, represents the full and entire agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this contract.



## **12.2 Section Headings**

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

## **12.3 References to Laws and Other Agreements**

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

## **12.4 Interpretation**

This Agreement, including the exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

## **12.5 Agreement**

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

## **12.6 Severability**

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

## **12.7 Exhibits**

Each of the Exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

**12.8 Non-Waiver Provision**

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

IN WITNESS WHEREOF, the City and the Company have executed this Agreement as of the day and year first above written.

CITY OF DEL MAR ("City")

ATTEST: Mercedes Martin  
CITY CLERK

By: [Signature]  
CITY OF DEL MAR

APPROVED AS TO FORM:

[Signature]  
City Attorney

COAST WASTE MANAGEMENT, INC.

By: [Signature]  
Name: Tina Rose  
Title: Vice-President

**EXHIBIT 1**  
**COMPANY PROPOSAL**

**EXHIBIT 2**  
**PUBLIC EDUCATION PLAN**  
**(to be prepared by Company)**

**EXHIBIT 3**  
**MAXIMUM INITIAL COMPANY COMPENSATION**  
**(To Include Rate Schedules)**

## EXHIBIT 4

### EXAMPLE RATE ADJUSTMENT FORMAT

#### EXHIBIT 4

#### EXAMPLE RATE ADJUSTMENT FORMAT

Service Type: Residential

Current Monthly Rate:	\$ 18.91
Less: Landfill Disposal Component	(5.252)
Franchise Fee @ 10%	<u>(1.89)</u>
Net Operating Expense (NOE)	11.77
CPI: 2.2%	
Add: CPI on NOE (.022 x \$11.77)	0.259
Franchise Fee on CPI adjmt to NOE	0.029
Disposal Adjustment-RSWA increase - 2%	0.105
Franchise Fee on Disposal adjustments	0.012
Add Back Landfill Disposal Component	5.252
Add Back Franchise Fee Component	<u>1.891</u>
Total Additions:	7.55
Add: Original Net Operating Expense	<u>11.77</u>
New Solid Waste Service Rate	<u><u>\$ 19.31</u></u>

**Landfill Disposal Component** = Fees charged for disposal charged under RSWA contract for the projected year.

**NOE**= Part of Total Rate attributable to Contractor operating expenses including general operating expenses, overhead, profit, etc.

**Franchise Fee** = Is set at a base of 10%

**CPI = 80% of the Change in the Los Angeles, Riverside, Orange County Consumer Price Index**

**A. Tipping Fees.** This component is considered separately from the base rate. No CPI increase will be applied but any increases and decreases will be passed through as set out in this Subsection. Tipping fee increases or decreases are intended to be "pass through."

The monthly rate shall be adjusted upward or downward due to the Contractor's increased or decreased costs resulting from changes in the tipping fees and any duly authorized fees, assessments or taxes to be collected along with tipping fees.

Contractor shall notify the City Manager of any increase or decrease. Along with such notification, Contractor shall provide a revised schedule of rates showing the effect of any such increase or decrease on the monthly rate per class of service. The tipping fee component shall be adjusted annually as designated in the RSWA Disposal Agreement. Once reviewed by the City Council, any approved increase or decrease shall be effective as of the date stipulated by the City Council.

**B. Base Rate.** The base rate subject to any CPI adjustments will be the monthly rates minus landfill disposal component and franchise fee component. The new base rate will be the result of applying the adjustment described in **Subsection A of this Section 8.3**. The resulting new base rate will be the base rate unless and until properly adjusted pursuant to this Agreement. The new monthly rates will be the sum of the base rate and the tipping fees, costs, and/or taxes specified in **Subsection A of this Section 8.3**.

**C. Applicable CPI Adjustment. Eighty (80) percent of the increase or decrease in the Consumer Price Index (CPI) for the previous 12-month period (December through November) for All Urban Consumers in the Los Angeles, Riverside, Anaheim area, not seasonally adjusted will be applied to the base rate of Subsection B. Thereafter, the CPI adjustment, when approved, will be effective July 1 of each year. CPI shall be capped at 4% annually. Notwithstanding, the CPI shall not be applied until the fiscal year beginning July 1, 2013.**

**D. Adjustment Calculation Example.** This provides sample rate adjustment calculations for a hypothetical residential collection service using the terms, conditions, definitions and formulae above.

### **Special Rate Review**

The Contractor may apply to the City Council for consideration of a special rate review to recover extraordinary increases in operating expenses per Section 5.5 of the Franchise Agreement.

## EXHIBIT 5

### CORPORATE GUARANTY

#### Guaranty

THIS GUARANTY (the "Guaranty") is given as of the \_\_\_\_ day of \_\_\_\_\_ 2012.

THIS GUARANTY is made with reference to the following facts and circumstances:

Coast Waste Management, Inc., hereinafter ("Owner") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by USA Waste of California, Inc., a Delaware corporation (Guarantor).

A. Owner and the City of Del Mar ("the City") have negotiated a Franchise Agreement dated as of (hereinafter "Agreement"). A copy of this Agreement is attached hereto.

B. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Owner's performance of the Agreement.

C. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Owner of each and every term and condition of the Agreement which Owner is required to perform, satisfy or observe. In the event that Owner fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, or cause to perform them in the place of the Owner or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Owner due to its breach of the Agreement.

2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Owner under the Agreement, shall



constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Owner in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. **Waivers** Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Owner; or (4) any merger or consolidation of the Owner with any other corporation, or any sale, lease or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Owner, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Owner or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Owner or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to,

notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Owner prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Owner arising out of the Agreement based on Owner's failure to perform which has not been settled or discharged.

5. **No Waivers** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law: Jurisdiction** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its

conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following Person as its agent for service of process in California:

CT Corporation  
818 West Seventh St  
Los Angeles, CA 90017

With a copy by certified mail to:

USA Waste of California, Inc.  
Attn. General Counsel – Western Group  
7025 North Scottsdale Road, Suite 200  
Scottsdale, AZ 85253

8. **Severability** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding On Successors** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. **Authority** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the Person signing this Guaranty on its behalf has the authority to do so.



## EXHIBIT 6

### COMPANY'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_, a \_\_\_\_\_ corporation, as PRINCIPAL, and \_\_\_\_\_, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of Two Hundred Thousand (\$200,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "INTEGRATED SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.

\_\_\_\_\_  
a \_\_\_\_\_ Corporation

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_  
(PRINCIPAL)

By: \_\_\_\_\_  
(ATTORNEY IN FACT)

(SEAL)

(SEAL)

**EXHIBIT 7**

**NOTARY CERTIFICATION**

STATE OF CALIFORNIA)

COUNTY OF \_\_\_\_\_ ) ss:

On \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of the Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such the Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary  
Public

My Commission Expires:

\_\_\_\_\_

## **EXHIBIT 8**

### **CITY SPONSORED SPECIAL EVENTS**

The City will provide the Contractor with a list of the six special events serviceable under Section 3.6.5 of this agreement.



## **EXHIBIT 9**

### **OPTIONAL PROGRAMS**

City may instruct Company to implement the following programs during the Agreement Term in accordance with the terms described below. Company shall be required to send a public outreach piece at the beginning of each program.

**EXHIBIT 10**  
**RSWA AGREEMENTS**